

PORET EXHIBIT 1

**EXPERT REPORT OF HAL PORET IN MATTER OF
ADIDAS AMERICA, INC. ET AL. V. THOM BROWNE INC.**

**SURVEY TO MEASURE WHETHER CERTAIN THOM BROWNE
PRODUCTS FEATURING MULTI-STRIPE PATTERNS CREATE A
LIKELIHOOD OF POST-SALE CONFUSION WITH ADIDAS**

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BACKGROUND AND PURPOSE

For many years adidas has used and owns registrations for its Three-Stripe Mark in connection with footwear and apparel, as well as other marks, including its Badge of Sport Mark, which incorporates the Three-Stripe Mark.

In connection with the above-captioned lawsuit, adidas alleges that a variety of items from Thom Browne infringe adidas' rights in its Three-Stripe Mark. Counsel for adidas retained me to design and conduct a survey to test the extent to which, if at all, certain Thom Browne products create a likelihood of post-sale confusion with respect to adidas. In particular, the following images including one or more pieces of Thom Browne apparel using a four-stripe pattern were separately tested:











Covering this assortment of items allowed the survey to collectively test:

- Both women's and men's items
- Items of various colors
- Both views of a single Thom Browne four-stripe item and views of multiple Thom Browne four-stripe items worn together
- Both long and short sleeve items
- Both shorts and long pants
- Both items with longer versus shorter stripes
- Both views where the Thom Browne red-white-blue tag on the back of the product are visible and views where the tag is obscured by the clothing.

- Both items that include a white Thom Browne label (or the four lines from that label) on the front of the product¹ and items that do not include this label.
- Both items that include a visible grosgrain “flag” on the back and items where that flag would not typically be visible.

The survey also tested the following Thom Browne shoe:



The survey tested for post-sale confusion, so the products were shown as displayed above, which is a reasonably representative reflection of how the products could be seen in various post-sale environments, such as being worn by another person or being displayed in social media posts. The survey showed multiple views for the clothing items for several reasons: (1) an individual who is seen wearing clothing in a post-sale environment will frequently be seen from various perspectives, such as if they are moving; (2) showing multiple views gave the most fair and realistic sense of the length and proportions of the stripes;

¹ The name Thom Browne appears on this label, but would not be readable in a post-sale scenario (or even in a pre-sale or point-of-sale scenario) unless a viewer got unusually close to the garment.

(3) showing multiple views allowed the survey to show both the front of the item and the back portion where the red-white-blue grosgrain “flag” is sometimes visible; and (4) showing multiple views allowed the viewer to see that the four stripes are only on the left side of the garment.

This report details the design, methodology, execution and results of the survey. As discussed in more detail below, the survey showed a high overall net confusion rate across all items of 26.9% after deducting the results of Control Groups to account for survey noise.

In connection with designing my survey and preparing this report, I reviewed the following materials: 1) Complaint; (2) Answer and Counterclaims; (3) Deposition transcript of Rodrigo Bazan and Bazan Exhibit 37; (4) adidas website; (5) Thom Browne website and Instagram account; (6) Accused Grosgrain Products List (originally served June 3, 2022 and updated June 29, 2022 and July 22, 2022); (7) Accused Four-Stripe Products List (originally served June 3, 2022 and updated June 29, 2022 and July 22, 2022). The fee charged for the survey is \$60,000. This includes the fees paid to outside vendors I used to conduct the surveys. For any additional work on this matter, I am being compensated at my ordinary hourly rate of \$825. My fees are not contingent on the nature of my opinions or the outcome of the proceeding.

AUTHORSHIP AND QUALIFICATIONS

This report was authored by, and the study detailed herein was designed, supervised, and implemented by, Hal L. Poret, President at Hal Poret, LLC. I have personally designed, supervised, and implemented well over 1,000 surveys regarding the perceptions and opinions of consumers. Over 500 have involved consumer perception with respect to trademarks and trade dress, and over 500 have been conducted online. I have personally designed numerous studies that have been admitted as evidence in legal proceedings and I have been accepted as an expert in survey research on numerous occasions by U.S. District Courts, the Trademark Trial and Appeal Board, the ITC, FCC, FTC, and the National Advertising Division of the Council of Better Business Bureaus (NAD).

I am a member of the American Association of Public Opinion Research (publisher of *Public Opinion Quarterly* and the *Journal of Survey Statistics and Methodology*) and the International Trademark Association. I routinely conduct market research surveys for a variety of small to large corporations and organizations. I have frequently spoken at major intellectual property and legal conferences on the topic of how to design and conduct surveys that meet legal evidentiary standards for reliability, including conferences held by the International Trademark Association (INTA), American Intellectual Property Law Association, Practising Law Institute, Managing Intellectual Property, Promotions Marketing Association, American Conference Institute, and various bar organizations.

In addition to my survey research experience, I hold bachelors and masters degrees in mathematics and a J.D. from Harvard Law School. Additional biographical material, including lists of testimony and publications, is provided in Appendix A.

STUDY DESIGN

This survey followed the Eveready format, which is a highly standard and well-accepted survey format for assessing likelihood of confusion. In an Eveready survey, only the allegedly confusing mark or product is shown, and respondents are questioned to determine if they make a mistaken mental connection to the senior mark on their own. The Eveready format is an ideal test for likelihood of post-sale confusion, as it presents allegedly infringing Thom Browne products and determines whether respondents make a mistaken mental connection to adidas on their own. The Eveready format is ideal for this type of circumstance, as it is the least suggestive form of confusion survey since it never mentions the adidas brand and never shows an image of an adidas product or any adidas mark. Accordingly, respondents can only express confusion if upon seeing the Thom Browne product(s) they think of and mention adidas on their own.

The survey included eight Test Groups, each of which tested a different product or set of products, and eight corresponding Control Groups.

Test Group 1

Test Group 1 was shown the following images of a Thom Browne hoodie sweatshirt² and compression sweats/tights³:

² <https://www.thombrowne.com/us/shopping/navy-loopback-jersey-knit-engineered-4-bar-stripe-classic-hoodie-13225336>. Since Thom Browne identifies this item as a “hoodie,” the term “hoodie sweatshirt” was used in the survey to refer to this item and in the screening questions to identify prospective purchasers of this type of item.

³ <https://www.thombrowne.com/us/shopping/navy-polyamide-interlock-4-bar-compression-tights-16159861>. Since Thom Browne identifies this item as “compression tights” and also classified them under “sweats,” the survey used the term “compression tights/sweatpants” in the screening questions to identify prospective purchasers of this type of item.







These items were shown to test an instance of exposure to multiple Thom Browne items containing four stripes. Multiple Thom Browne items can be worn together in post-sale environments, and both of these products are shown in the “sets/womens-sweats” section of the Thom Browne website.⁴ As shown above,

⁴ <https://www.thombrowne.com/us/sets/womens-sweats>. The Thom Browne website presents many of the accused products worn together, which is an acknowledgement that Thom Browne items are likely to be worn together in a post-sale environment.

these images include a view of the white Thom Browne label on the front of the image and of the red-white-blue tag on the back of the compression sweats.⁵

Test Group 2

Test Group 2 was shown the following images of the same Thom Browne hoodie sweatshirt⁶ worn with a bottom that is not an allegedly infringing Thom Browne item:

⁵ In both this and other groups involving items containing the white label, the survey appropriately simulated the reality that in a typical post-sale scenario, a viewer would be able to see that there is a white label on the front of the apparel but would not be able to read the words without getting unusually close. The red-white-blue tag was visible on the back of the sweatpants/tights, but was not visible on the back of the hoodie, because the hood of the hoodie would typically cover the tag.

⁶ <https://www.thombrowne.com/us/shopping/navy-loopback-jersey-knit-engineered-4-bar-stripe-classic-hoodie-13225336>.





This was used to test a scenario with only a single allegedly infringing Thom Browne item and in which no red-white-blue flag/tag is visible (in this case because the hood on the hoodie would typically cover the flag/tag in a post-sale view).

Test Group 3

Test Group 3 was shown the following images of a Thom Browne compression tee shirt⁷ and running shorts⁸:

⁷ <https://www.thombrowne.com/us/shopping/navy-piece-dyed-interlock-4-bar-compression-tee-16161715>. Since Thom Browne identifies this item as a “compression tee,” the term “compression tee shirt” was used in the screening questions to identify prospective purchasers of this type of item.

⁸ <https://www.thombrowne.com/us/shopping/charcoal-flyweight-tech-4-bar-running-shorts-14831262>. Since Thom Browne identifies this item as “running shorts,” the survey used the term “running shorts” in the screening questions to identify prospective purchasers of this type of item.







These items were shown to test another instance of exposure to multiple Thom Browne items containing four stripes. Both of these products can be worn together and both are shown on the Thom Browne website. As shown above, these images include views of the red-white-blue tag on the back of the shirt and shorts. The images also permit respondents to view Thom Browne's four-lines mark (which I understand represent the lines on the white square label used on other products) on the lower left portion of the top.⁹

⁹ Exhibit 37 to Deposition of Rodrigo Bazan.

Test Group 4

Test Group 4 was shown the following images of a Thom Browne tee shirt¹⁰ and sweatpants¹¹:

¹⁰ <https://www.thombrowne.com/us/shopping/white-classic-pique-rib-side-insert-4-bar-t-shirt-14777101>. Since Thom Browne identifies this item as a “t-shirt” the term “tee shirt” was used in the screening questions to identify prospective purchasers of this type of item.

¹¹ <https://www.thombrowne.com/us/shopping/classic-sweatpants-with-engineered-4-bar-in-classic-loop-back-12477630>. Since Thom Browne identifies this item as “sweatpants,” the survey used the term “sweatpants” in the screening questions to identify prospective purchasers of this type of item.







These items were shown to test another instance of exposure to multiple Thom Browne items containing four stripes, this time on men's items. Both of these products can be worn together and both are shown on the Thom Browne website. As shown above, these images include a view of the white label on the front of the sweatpants and views of the red-white-blue tag on the back of the shirt and sweatpants.

Test Group 5

Test Group 5 was shown the following images of Thom Browne shorts¹² worn with a top that is not an allegedly infringing Thom Browne item:

¹² <https://www.thombrowne.com/us/shopping/silver-sheer-ripstop-mid-thigh-4-bar-shorts-15612425>. Since Thom Browne identifies this item as “shorts,” the term “shorts” was used in the survey to refer to this item and in the screening questions to identify prospective purchasers of this type of item.





This was used to test a scenario with only a single allegedly infringing Thom Browne item with no white label but with a red-white-blue tag visible. As shown above, these images include a view of the red-white-blue tag on the back of the shorts.

Test Group 6

Test Group 6 was shown the following images of a Thom Browne compression/sweat jacket¹³ worn with a bottom that is not an allegedly infringing Thom Browne item:



¹³ <https://www.thombrowne.com/us/shopping/navy-4-bar-compression-zip-up-jacket-16126393>. Since Thom Browne identifies this item as a “compression jacket” and it is also listed under men’s “sweats,” the term “compression/sweat jacket” was used in the screening questions to identify prospective purchasers of this type of item.





This was used to test a scenario with only a single allegedly infringing Thom Browne item with no white label but with a red-white-blue tag visible. As shown above, these images include a view of the red-white-blue tag on the back of the jacket.

Test Group 7

Test Group 7 was shown the following images of the same Thom Browne sweatpants shown in Test Group 4, worn with a top that is not an allegedly infringing Thom Browne item:







This was used to test a scenario with only a single allegedly infringing Thom Browne item with both the white label a red-white-blue tag visible.

Test Group 8

Test Group 8 was shown the following image of a Thom Browne running shoe¹⁴:

¹⁴ <https://www.thombrowne.com/gn/shopping/running-shoe-with-red-white-and-blue-stripe-in-suede-cotton-blend-tech-12550124>. Since Thom Browne identifies this item as a “running shoe,” the term “running shoe” was used in the screening questions to identify prospective purchasers of this type of item.



This was used to test a scenario in which a multi-stripe pattern is seen on Thom Browne footwear.

Control Groups

The following shows the images used in each of the corresponding Control Groups.

Control Group 1

Control Group 1 was shown the following images in which the Thom Browne hoodie sweatshirt and compression sweats/tights had been altered to display a one-stripe pattern instead of a four-stripe pattern, while keeping everything else (including, for example, the white square label and the red-white-blue tag) the same as in the test images:







Control Group 2

Control Group 2 was shown the following images in which the Thom Browne hoodie sweatshirt was altered to display a one-stripe pattern instead of a four-stripe pattern:





Control Group 3

Control Group 3 was shown the following images in which the Thom Browne compression tee shirt and running shorts were altered to display a one-stripe pattern instead of a four-stripe pattern:







Control Group 4

Control Group 4 was shown the following images in which the Thom Browne tee shirt and sweatpants were altered to display a one-stripe pattern instead of a four-stripe pattern:







Control Group 5

Control Group 5 was shown the following images in which the Thom Browne shorts were altered to display a one-stripe pattern instead of a four-stripe pattern:





Control Group 6

Control Group 6 was shown the following images in which the Thom Browne compression/sweat jacket was altered to only display a one-stripe pattern instead of a four-stripe pattern:







Control Group 7

Control Group 7 was shown the following images of the same altered Thom Browne sweatpants shown in Control Group 4:







Control Group 8

Control Group 8 was shown the following image of the altered Thom Browne running shoe:



As shown above, the control images were identical except for changing the allegedly infringing pattern from multiple stripes to one stripe. These constituted ideal controls, in that it held all common, non-infringing elements constant, and altered only the allegedly infringing multi-stripe pattern. This conformed with the standard for creating an ideal control, as articulated in the Reference Guide on Survey Research: “In designing a survey-experiment, the expert should select a stimulus for the control group that shares as many characteristics with the experimental stimulus as possible, with the key exception of the characteristic whose influence is being assessed.”¹⁵ This allows the Control Group to measure the tendency to name adidas due merely to the use of a single stripe or any other factors, such as guessing adidas because it is a well-known maker of the type of apparel and footwear shown. Subtracting the result of the Control Group removes such noise and yields a net confusion rate that must be attributable to the similarity of the multi-stripe pattern to adidas’ Three-Stripe Mark.

¹⁵ 7 Shari S. Diamond, Reference Guide on Survey Research, Reference Manual on Scientific Evidence (Third edition, 2011) at 399.

Test Group Survey Screens

After a series of initial screening questions, all respondents Test Groups 1, 3, and 4 were prompted as follows:

On the next screen you will see images of **clothing**.

Please take as much time as you need to view the clothing so we can ask you some questions about it.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

The survey language for respondents in Test Groups 1, 3 and 4 referred to the “clothing” because both clothing items shown in the images were allegedly infringing Thom Browne items, and the questions applied collectively to both items.

Next, all respondents in Test Groups 1, 3, and 4 were shown the following instruction above the first of the images for the Test Group to which they were assigned (as shown earlier):

Please click through each image of the clothing below. You may click on any image if you would like to see it enlarged.

After viewing the first image, respondents clicked to see the additional images of the products they were instructed to view. Respondents viewed each image for as long as desired and could scroll back and forth between the images.

Respondents confirmed they viewed all images clearly before continuing with the survey. This is a standard quality assurance measure to ensure respondents successfully view the clothing bearing the trade dress at issue.

Upon continuing, respondents were asked:

What company or brand do you believe makes or puts out the clothing we just showed you, if you have an opinion?

Respondents could type in any answer or select “Don’t know/No opinion.”

Respondents who typed in an answer were then asked:

What makes you think the clothing we showed you is made or put out by [THE ANSWER PROVIDED BY RESPONDENTS IN RESPONSE TO THE PREVIOUS QUESTION WAS INSERTED INTO THE QUESTION TEXT]?

Respondents could type in any answer.

All respondents were then asked:

Do you think the clothing we showed you is affiliated with, or sponsored or approved by, any other company or brand?

- Yes, I do
- No, I do not
- Don’t know/No opinion

Respondents who answered affirmatively were then asked:

You answered that you think the clothing we showed you is affiliated with, or sponsored or approved by, another company or brand.

What other company or brand?

If you are thinking of more than one company or brand, please enter each one in a separate box below. Or if you don't know you may select that option.

Respondents could name up to five different companies or brand or select “Don’t know.”

Respondents who named at least one company or brand were then instructed:

Each company or brand you mentioned is listed below.

For each one, please tell us your reasons for thinking that the clothing we showed you is affiliated with, or sponsored or approved by, that company or brand.

Please be as specific and detailed as possible.

Beneath this instruction, respondents were shown the answer(s) they gave in response to the previous question and to the right of any company or brand they previously named, respondents provided their reasons for thinking the clothing is affiliated with, or sponsored or approved by, that company or brand.

The survey was identical for the other Test Groups with the sole exception of the terms used to refer to the clothing items. Whereas both clothing items shown in the images for Test Groups 1, 3, and 4 were allegedly infringing Thom Browne items, only one of the clothing items shown in the images in Test Groups 2, 5, 6, and 7 was a Thom Browne item, and the questions only applied to that one Thom Browne item. To make that clear to the respondent, the survey language for Test Groups 2, 5, 6, and 7 replaced the word “clothing” with the specific item being tested. In Test Group 2, the language in the initial instruction and the survey questions was altered to refer specifically to the “hoodie sweatshirt.” In Test Group 5, the language was altered to refer specifically to the “pair of

shorts.” In Test Group 6, the language was altered to refer specifically to the “jacket.” In Test Group 7, the language was altered to refer specifically to the “pair of sweatpants.” Since respondents in Test Group 8 were shown only footwear, the survey language referred to the “footwear” rather than “clothing.” This ensured that in each of Test Groups 2, 5, 6, and 7, it was clear to respondents that the questions applied specifically to the Thom Browne item at issue.

Other than this replacement of the term “clothing” in Test Groups 1, 3, and 4 with the specific item tested in Test Groups 2, 5, 6, 7, and 8, all the survey instructions and questions were identical in each Group.

Control Groups

As discussed above, the survey included eight corresponding Control Groups, each comprised of a separate group of 150 unique respondents. A Control Group’s function is to measure the survey “noise” level or “false positive” level – i.e., the tendency of survey respondents to connect the clothing to adidas for reasons that cannot be attributed to similarity to the Three-Stripe Mark, such as adidas being a well-known and established brand of athletic-style clothing, or other forms of respondent or survey error. The Control Groups alter the allegedly infringing designs in order to measure the extent to which respondents will nevertheless connect the products to adidas even when shown images of control products bearing designs that are not alleged to be confusingly similar to adidas’ Three-Stripe Mark. This allows me to appropriately discount each Test Group confusion rate by deducting this “noise” or “false positive” or placebo rate in the corresponding Control Group and arriving at a “net” confusion level that can be reliably attributed to the similarity of the mark at issue.

Respondents in each Control Group took a survey identical to the survey taken by respondents in each corresponding Test Group with the sole exception that the Control Groups saw the control images as described above in lieu of the test images.

Each Control image was presented in an identical format and manner as the corresponding Test image for each Group. All questions and instructions shown to Control Group respondents were identical to the Test Group.

Screenshots of the survey are provided in Appendix C.

SUMMARY OF KEY FINDINGS

This section details certain key survey findings. Other survey results are discussed further in the Detailed Findings section below.

Group 1 Confusion Result – Women’s Hoodie and Compression Tights



- 56 out of 150 respondents in Test Group 1 identified adidas in response to at least one of the confusion questions, resulting in a 37.3% gross confusion rate.
- 17 out of 150 respondents in the corresponding Control Group identified adidas, resulting in a 11.3% noise rate.¹⁶
- The resulting net confusion rate is 26.0%:

Group 1 Net Confusion Rate	
Test Group 1 Gross Confusion Rate	37.3%
Control Group 1 Noise Rate	11.3%
Net Group 1 Confusion Rate	26.0%

¹⁶ In my opinion, the survey noise levels detailed herein are at least in part attributable to the fact that the adidas Three-Stripe mark is so well-known and strong that even a single stripe on the types of apparel at issue causes many respondents to make a connection to adidas. Accordingly, it is important to note that the use of one-stripe controls was conservative in that the net confusion levels were substantially reduced due to high noise levels.

Group 2 Confusion Result – Women's Hoodie Sweatshirt

- 68 out of 150 respondents in Test Group 2 identified adidas in response to at least one of the confusion questions, resulting in a 45.3% gross confusion rate.
- 10 out of 150 respondents in the corresponding Control Group identified adidas, resulting in a 6.7% noise rate.
- The resulting net confusion rate is 38.6%:

Group 2 Net Confusion Rate	
Test Group 2 Gross Confusion Rate	45.3%
Control Group 2 Noise Rate	6.7%
Net Group 2 Confusion Rate	38.6%

Group 3 Confusion Result – Women's Compression Tee and Running Shorts

- 57 out of 150 respondents in Test Group 3 identified adidas in response to at least one of the confusion questions, resulting in a 38.0% gross confusion rate.
- 20 out of 150 respondents in the corresponding Control Group identified adidas, resulting in a 13.3% noise rate.
- The resulting net confusion rate is 24.7%:

Group 3 Net Confusion Rate	
Test Group 3 Gross Confusion Rate	38.0%
Control Group 3 Noise Rate	13.3%
Net Group 3 Confusion Rate	24.7%

Group 4 Confusion Result – Men's Tee Shirt and Sweatpants

- 58 out of 150 respondents in Test Group 4 identified adidas in response to at least one of the confusion questions, resulting in a 38.7% gross confusion rate.
- 5 out of 150 respondents in the corresponding Control Group identified adidas, resulting in a 3.3% noise rate.
- The resulting net confusion rate is 35.4%:

Group 4 Net Confusion Rate	
Test Group 4 Gross Confusion Rate	38.7%
Control Group 4 Noise Rate	3.3%
Net Group 4 Confusion Rate	35.4%

Group 5 Confusion Result – Men's Shorts

- 55 out of 150 respondents in Test Group 5 identified adidas in response to at least one of the confusion questions, resulting in a 36.7% gross confusion rate.
- 8 out of 150 respondents in the corresponding Control Group identified adidas, resulting in a 5.3% noise rate.
- The resulting net confusion rate is 31.4%:

Group 5 Net Confusion Rate	
Test Group 5 Gross Confusion Rate	36.7%
Control Group 5 Noise Rate	5.3%
Net Group 5 Confusion Rate	31.4%

Group 6 Confusion Result – Men's Compression/Sweat Jacket

- 75 out of 150 respondents in Test Group 6 identified adidas in response to at least one of the confusion questions, resulting in a 50.0% gross confusion rate.
- 30 out of 150 respondents in the corresponding Control Group identified adidas, resulting in a 20.0% noise rate.
- The resulting net confusion rate is 30.0%:

Group 6 Net Confusion Rate	
Test Group 6 Gross Confusion Rate	50.0%
Control Group 6 Noise Rate	20.0%
Net Group 6 Confusion Rate	30.0%

Group 7 Confusion Result – Men's Sweatpants

- 37 out of 150 respondents in Test Group 7 identified adidas in response to at least one of the confusion questions, resulting in a 24.7% gross confusion rate.
- 14 out of 150 respondents in the corresponding Control Group identified adidas, resulting in a 9.3% noise rate.
- The resulting net confusion rate is 15.3%:

Group 7 Net Confusion Rate	
Test Group 7 Gross Confusion Rate	24.7%
Control Group 7 Noise Rate	9.3%
Net Group 7 Confusion Rate	15.4%

Group 8 Confusion Result – Footwear

- 37 out of 150 respondents in Test Group 8 identified adidas in response to at least one of the confusion questions, resulting in a 24.7% gross confusion rate.
- 16 out of 150 respondents in the corresponding Control Group identified adidas, resulting in a 10.7% noise rate.
- The resulting net confusion rate is 14.0%:

Group 8 Net Confusion Rate	
Test Group 8 Gross Confusion Rate	24.7%
Control Group 8 Noise Rate	10.7%
Net Group 8 Confusion Rate	14.0%

All Groups Combined Confusion Result

- 443 out of 1200 respondents across all eight Test Groups identified adidas in response to at least one of the confusion questions, resulting in a 36.9% gross confusion rate.
- 120 out of 1200 respondents across all the corresponding Control Groups identified adidas, resulting in a 10.0% noise rate.
- The resulting net confusion rate is 26.9%:

All Groups - Net Confusion Rate	
Test Groups Gross Confusion Rate	36.9%
Control Groups Noise Rate	10.0%
Net Confusion Rate	26.9%

All Women's Clothing Combined Confusion Result

- 181 out of 450 respondents across the three Test Groups which saw women's clothing identified adidas in response to at least one of the confusion questions, resulting in a 40.2% gross confusion rate.
- 47 out of 450 respondents across all the corresponding Control Groups identified adidas, resulting in a 10.4% noise rate.
- The resulting net confusion rate is 29.8%:

All Women's Groups - Net Confusion Rate	
Women's Test Groups Gross Confusion Rate	40.2%
Women's Control Groups Noise Rate	10.4%
Net Confusion Rate among Women's Groups	29.8%

All Men's Clothing Combined Confusion Result

- 225 out of 600 respondents across the three Test Groups which saw men's clothing identified adidas in response to at least one of the confusion questions, resulting in a 37.5 % gross confusion rate.
- 57 out of 600 respondents across all the corresponding Control Groups identified adidas, resulting in a 9.5% noise rate.
- The resulting net confusion rate is 28.0%:

All Men's Clothing Groups - Net Confusion Rate	
Men's Clothing Test Groups Gross Confusion Rate	37.5%
Men's Clothing Control Groups Noise Rate	9.5%
Net Confusion Rate among Men's Clothing Groups	28.0%

Conclusions

Based on the net confusion rates, it is my opinion that the four-stripe designs on the Thom Browne apparel and the red-and-blue two-stripe design on the Thom Browne footwear create a substantial likelihood of post-sale confusion with respect to adidas and its Three-Stripe Mark.

See Detailed Findings section below for additional information on results. The full data will be provided in its original electronic form in Appendix D.

METHODOLOGY

THE RELEVANT UNIVERSE OF INTEREST

The universe for this survey consisted of U.S. consumers age 16 and older who met any of the following criteria:

- Have personally purchased in the past twelve months, or are likely to personally purchase in the next twelve months, one of the following type of items of women's clothing or footwear tested in the survey: hoodie sweatshirt, compression tights/sweatpants, compression tee shirt, running shorts or running shoes; or
- Have personally purchased in the past twelve months, or are likely to personally purchase in the next twelve months, one of the following items of men's clothing or footwear tested in the survey: compression/sweat jacket, sweatpants, tee shirt, shorts or running shoes.

This was the appropriate universe because such individuals are actual or prospective consumers of the types of products put out by Thome Browne bearing the allegedly infringing stripe patterns at issue.¹⁷

The following screening questions were employed to ensure the final survey sample was comprised of respondents from the appropriate sample universe.

First, after initial demographic questions, all potential respondents were asked:

In the past 12 months, which of the following, if any, have you personally purchased, either for yourself or for someone else?
(Select all that apply)

¹⁷ Barber, William and Yaquinto, Giulio E, "The Universe," in Trademark and Deceptive Advertising Surveys: Law, Science, and Design," eds. Shari Seidman Diamond and Jerre B. Swann, American Bar Association (2d Ed. 2022) at 33.

The following table displays the randomized options available from which respondents could select and the proportion of final respondents that selected each:

Purchased in Past 12 Months								
Group	1	2	3	4	5	6	7	8
	N=300	N=300	N=300	N=300	N=300	N=300	N=300	N=300
Women's clothing or footwear	92.7%	91.3%	94.0%	30.7%	35.3%	42.7%	35.3%	55.3%
Men's clothing or footwear	50.0%	52.7%	60.3%	87.7%	89.7%	92.7%	89.7%	59.3%
Mobile phone or tablet	41.3%	40.3%	47.0%	42.0%	40.7%	53.0%	46.0%	36.7%
Mobile phone or tablet case	39.3%	43.0%	45.7%	32.7%	36.0%	53.0%	42.7%	33.7%
Shower curtain or mat	37.0%	36.0%	45.7%	25.3%	29.0%	44.0%	38.0%	30.0%
Chutil cover or box	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
None of these	0.7%	1.3%	0.3%	4.0%	3.3%	1.0%	1.0%	3.0%

This list of options helped mask the purpose of the survey and prevented respondents from purposefully selecting a qualifying choice. In addition, "Chutil cover or box" is a fictitious option included as a quality control measure for the purpose of weeding out respondents who were clicking answers indiscriminately or not paying attention.¹⁸

¹⁸ Such "attention check" measures are recognized to increase the reliability of surveys. Neal, David T. "Psychological Considerations in Designing Trademark and False Advertising Survey Questionnaires" in Trademark and Deceptive Advertising SURVEYS: Law, Science, and Design, eds. Shari Seidman Diamond and Jerre B. Swann (2d. Ed. 2022) at 281-282 (hereinafter "Neal"); Kugler, Matthew B. and Henn Jr., R. Charles, "Internet Surveys in Trademark Cases: Benefits, Challenges and Solutions," in Trademark and Deceptive Advertising SURVEYS: Law, Science, and Design, eds. Shari

Next, all potential respondents were asked:

In the next 12 months, which of the following, if any, are you likely to personally purchase, either for yourself or for someone else?
(Select all that apply)

The same options were provided in the same order:

Likely to Purchase in Next 12 Months								
Group	1	2	3	4	5	6	7	8
	N=300	N=300	N=300	N=300	N=300	N=300	N=300	N=300
Women's clothing or footwear	94.0%	93.0%	91.3%	34.3%	32.0%	47.7%	36.7%	56.3%
Men's clothing or footwear	51.0%	55.0%	58.3%	87.0%	86.3%	94.0%	91.0%	60.3%
Mobile phone or tablet	37.0%	39.0%	44.7%	31.3%	37.7%	59.0%	41.7%	33.7%
Mobile phone or tablet case	31.3%	33.7%	39.0%	23.7%	28.3%	53.7%	33.7%	26.3%
Shower curtain or mat	28.3%	32.3%	31.0%	19.3%	20.0%	41.7%	29.0%	17.3%
Chutil cover or box	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
None of these	1.7%	2.7%	2.3%	5.0%	3.3%	1.0%	3.3%	4.7%

Respondents who previously answered that they have purchased women's clothing or footwear in the past twelve months, were then asked:

In the past 12 months, which of the following items of women's clothing or footwear, if any, have you personally purchased, either for yourself or for someone else?
(Select all that apply)

Seidman Diamond and Jerre B. Swann (2d. Ed. 2022) at 301-302 (hereinafter "Kugler and Henn").

The following table displays the randomized options available from which respondents could select and the proportion of final respondents that selected each:

Women's Clothing or Footwear Purchased in Past 12 Months								
Group	1	2	3	4	5	6	7	8
	N=300	N=300	N=300	N=300	N=300	N=300	N=300	N=300
Hoodie sweatshirt	56.3%	68.0%	46.3%	10.0%	13.0%	32.0%	21.3%	15.0%
Compression tights/sweatpants	37.3%	31.0%	38.0%	5.3%	10.3%	28.0%	11.0%	9.0%
Compression tee shirt	8.7%	9.7%	21.3%	1.3%	4.0%	16.3%	6.7%	4.0%
Running shorts	27.0%	22.3%	65.7%	5.7%	9.3%	25.7%	13.0%	15.0%
Running shoes	47.7%	46.0%	57.7%	14.0%	15.0%	31.3%	18.0%	39.0%
Collar shirt	14.3%	12.7%	13.3%	5.3%	4.3%	10.7%	8.0%	7.3%
Dress	50.0%	48.3%	53.0%	16.3%	17.0%	20.7%	18.7%	24.3%
Turtleneck sweater	7.0%	10.0%	10.3%	3.3%	3.3%	8.0%	2.7%	2.3%
Wool trousers	2.0%	2.7%	3.7%	1.0%	0.7%	2.3%	2.0%	0.3%
Sandals	52.0%	54.0%	56.0%	15.7%	17.3%	28.7%	20.0%	24.7%
None of these	2.3%	2.0%	0.3%	4.0%	2.7%	0.7%	2.3%	4.3%
Not asked/Has not purchased	7.3%	8.7%	6.0%	69.3%	64.7%	57.3%	64.7%	44.7%

Respondents who previously answered that they are likely to purchase women's clothing or footwear in the next twelve months, were asked:

In the next 12 months, which of the following items of women's clothing or footwear, if any, are you likely to personally purchase, either for yourself or for someone else?
(Select all that apply)

The same options were provided in the same order:

Women's Clothing or Footwear Likely to Purchase in Next 12 Months								
Group	1	2	3	4	5	6	7	8
	N=300	N=300	N=300	N=300	N=300	N=300	N=300	N=300
Hoodie sweatshirt	60.7%	77.7%	46.0%	12.3%	13.0%	36.0%	21.3%	16.7%
Compression tights/sweatpants	41.7%	31.3%	35.3%	7.0%	9.7%	29.3%	11.3%	10.0%
Compression tee shirt	14.3%	13.7%	22.0%	2.7%	2.3%	20.7%	5.3%	5.7%
Running shorts	25.3%	25.7%	56.3%	6.7%	6.3%	27.3%	13.3%	14.3%
Running shoes	53.3%	51.7%	57.3%	14.0%	12.3%	32.7%	19.3%	40.7%
Collar shirt	16.3%	22.0%	19.7%	7.7%	7.0%	13.7%	8.7%	7.3%
Dress	47.7%	46.0%	53.0%	19.7%	16.0%	27.3%	16.7%	23.0%
Turtleneck sweater	12.3%	17.7%	13.0%	3.7%	4.3%	13.3%	5.7%	6.0%
Wool trousers	4.3%	6.3%	4.7%	0.7%	1.0%	5.3%	2.3%	1.7%
Sandals	45.3%	46.7%	53.0%	12.7%	14.0%	30.7%	19.0%	21.7%
None of these	3.0%	0.7%	2.0%	4.0%	3.3%	1.3%	3.0%	4.0%
Not asked/Has not purchased	6.0%	7.0%	8.7%	65.7%	68.0%	52.3%	63.3%	43.7%

Respondents who answered that they have purchased any of the following items of women's clothing or footwear in the past twelve months or are likely to in the next twelve months, were considered part of the relevant sample universe and qualified to participate in the main survey:

- Hoodie sweatshirt
- Compression tights/sweatpants
- Compression tee shirt
- Running shorts
- Running shoes

Meanwhile, respondents who previously answered that they have purchased men's clothing or footwear in the past twelve months, were asked:

In the past 12 months, which of the following items of men's clothing or footwear, if any, have you personally purchased, either for yourself or for someone else?

(Select all that apply)

The following table displays the randomized options available from which respondents could select and the proportion of final respondents that selected each:

Men's Clothing or Footwear Purchased in Past 12 Months								
Group	1	2	3	4	5	6	7	8
	N=300	N=300	N=300	N=300	N=300	N=300	N=300	N=300
Compression/ sweat jacket	4.7%	6.3%	6.7%	4.0%	5.0%	57.3%	7.3%	5.3%
Sweatpants	21.0%	28.0%	33.7%	22.3%	27.7%	64.7%	71.0%	14.7%
Tee shirt	39.3%	42.0%	47.0%	77.3%	67.3%	75.3%	76.3%	37.0%
Shorts	32.3%	29.3%	41.3%	46.0%	80.0%	72.3%	61.3%	31.3%
Running shoes	26.0%	27.0%	33.0%	36.3%	46.3%	69.3%	55.7%	46.3%
Collar shirt	19.0%	18.7%	25.3%	28.3%	31.0%	47.3%	35.0%	20.7%
Sport coat	8.3%	8.3%	7.3%	4.0%	5.0%	24.0%	12.3%	5.3%
Turtleneck sweater	3.7%	2.7%	4.3%	2.0%	1.3%	12.7%	5.3%	2.3%
Wool trousers	3.3%	4.7%	3.0%	1.3%	1.3%	6.3%	3.0%	2.7%
Sandals	11.3%	12.7%	16.3%	16.7%	20.0%	30.3%	23.7%	11.0%
None of these	0.7%	1.7%	1.3%	2.0%	0.3%	0.3%	0.3%	0.3%
Not asked/Has not purchased	50.0%	47.3%	39.7%	12.3%	10.3%	7.3%	10.3%	40.7%

Respondents who previously answered that they are likely to purchase men's clothing or footwear in the next twelve months, were asked:

In the next 12 months, which of the following items of men's clothing, if any, are you likely to personally purchase, either for yourself or for someone else?

(Select all that apply)

The same options were provided in the same order:

Men's Clothing or Footwear Likely to Purchase in Next 12 Months								
Group	1	2	3	4	5	6	7	8
	N=300	N=300	N=300	N=300	N=300	N=300	N=300	N=300
Compression/ sweat jacket	6.0%	8.3%	8.0%	3.0%	5.0%	75.7%	7.3%	4.7%
Sweatpants	23.7%	28.7%	30.3%	23.3%	24.0%	66.7%	70.7%	17.3%
Tee shirt	38.0%	45.3%	44.3%	71.7%	60.3%	72.3%	74.7%	37.7%
Shorts	29.0%	28.3%	38.0%	40.0%	67.7%	66.0%	56.3%	28.3%
Running shoes	24.7%	31.7%	35.7%	37.7%	38.0%	61.7%	52.3%	45.3%
Collar shirt	21.7%	18.3%	23.7%	31.7%	34.3%	50.0%	38.7%	23.0%
Sport coat	10.3%	9.0%	11.3%	8.0%	9.7%	32.3%	17.3%	7.7%
Turtleneck sweater	3.3%	5.3%	4.7%	4.0%	3.3%	19.0%	8.7%	3.7%
Wool trousers	4.0%	3.7%	4.0%	2.7%	2.7%	15.0%	4.7%	2.7%
Sandals	9.7%	12.7%	16.7%	14.7%	20.7%	37.0%	23.3%	11.7%
None of these	1.3%	1.0%	1.3%	2.7%	3.3%	0.3%	0.7%	2.0%
Not asked/Has not purchased	49.0%	45.0%	41.7%	13.0%	13.7%	6.0%	9.0%	39.7%

Respondents who answered that they have purchased any of the following items of men's clothing or footwear in the past twelve months or are likely to in the next twelve months, were considered part of the relevant sample universe and qualified to participate in the main survey:

- Compression/ sweat jacket
- Sweatpants
- Tee shirt
- Shorts
- Running shoes

Among all respondents who qualified for the main survey, respondents were eligible for Group assignment based on the specific clothing or footwear they previously selected.

- Respondents who have purchased, or are likely to purchase, a women's

hoodie sweatshirt were eligible for Groups 1 or 2

- Respondents who have purchased, or are likely to purchase, women's compression tights/sweatpants were eligible for Group 1
- Respondents who have purchased, or are likely to purchase, a women's compression tee shirt or running shorts were eligible for Group 3
- Respondents who have purchased, or are likely to purchase, a men's tee shirt were eligible for Group 4
- Respondents who have purchased, or are likely to purchase, men's shorts were eligible for Group 5
- Respondents who have purchased, or are likely to purchase, a men's compression/sweat jacket were eligible for Group 6
- Respondents who have purchased, or are likely to purchase, men's sweatpants were eligible for Groups 4 or 7
- Respondents who have purchased either women's or men's running shoes were eligible for Group 8

Each respondent was randomly assigned to either a Test or Control for one of the Groups for which they were eligible.

Upon completion of the main survey, all respondents were asked a final series of questions for classification purposes. First:

Do you or does anyone in your household work for any of the following?
(*Select all that apply*)

Related Industry								
Group	1	2	3	4	5	6	7	8
	N=300	N=300	N=300	N=300	N=300	N=300	N=300	N=300
A company that makes or sells clothing	3.7%	3.3%	4.7%	4.3%	4.3%	4.3%	2.3%	2.0%
A company that makes or sells footwear	1.7%	1.7%	2.3%	1.0%	1.0%	2.7%	2.3%	2.7%
An advertising or market research company	2.7%	2.3%	2.0%	2.0%	0.7%	2.0%	1.0%	2.3%
No, none of these	94.7%	94.0%	93.0%	93.7%	95.0%	93.7%	95.7%	94.3%

Respondents who work of have a member of their household who works for a company that makes or sells clothing or footwear, were then also asked:

Do you or does anyone in your household work for any of the following companies?
(Select all that apply)

Companies Employed by								
Group	1	2	3	4	5	6	7	8
	N=300	N=300	N=300	N=300	N=300	N=300	N=300	N=300
adidas	0.8%	0.3%	1.0%	1.0%	1.0%	0.0%	1.7%	0.0%
Nike	1.1%	0.0%	1.0%	1.3%	0.7%	1.0%	2.3%	1.0%
Under Armour	0.4%	0.3%	0.3%	0.3%	0.7%	0.0%	0.7%	0.0%
Puma	0.5%	0.0%	0.7%	0.7%	0.3%	0.0%	1.3%	0.0%
New Balance	0.4%	0.0%	0.3%	0.3%	0.7%	0.0%	1.7%	0.0%
Columbia	0.2%	0.0%	0.0%	0.3%	0.0%	0.0%	1.0%	0.0%
Thom Browne	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Kadri	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%	0.0%	0.0%
None of these	2.8%	3.3%	2.7%	3.0%	2.7%	3.7%	2.3%	2.7%
Not asked/not employed in clothing or footwear	64.0%	96.0%	96.0%	95.0%	95.0%	95.3%	94.3%	96.3%

Excluding the negligible number of respondents who work in one of these fields of for adidas would not impact the results of this study or my conclusions.

This concluded the screening and classification questions for all respondents.

The actual wording of the screening questions used is shown in Appendix B.

SAMPLING PLAN

The sampling plan involved a random selection of consumers who are part of an online panel. Online surveys are well-accepted in the field of survey research as a standard, reliable methodology. Indeed, online surveys are now the most common method of conducting market research among consumers. Businesses and other organizations routinely make decisions of importance based on the results of online survey research among consumers, and online surveys have been accepted in evidence in numerous U.S. District Court cases and TTAB proceedings. Online surveys are also the dominant form of survey used in connection with litigation surveys.¹⁹ I have personally designed and executed numerous internet surveys that have been accepted by courts and the TTAB.

The sample of panelists used in the survey was provided by Prodege, LLC, a leading supplier of online sample for surveys. I have worked with Prodege on previous surveys and have found its procedures and panels to be highly reliable. Prodege has large and diverse panels consisting of millions of participants and is highly regarded as a reputable source of respondents for online surveys within the field of market research. Use of online panels is extremely common and well-

¹⁹ Kugler and Henn at 291. As of 2019, approximately 90% of U.S. adults are connected to the internet, through a smartphone, tablet, laptop, or other computer, including 99 percent of those between the ages of 30 and 49 and 98 percent of those between 18 and 29. *Id.* at 291-292 (citing *Internet/Broadband Fact Sheet*, Pew Res. Ctr. (June 12, 2019)).

accepted as a sampling method for surveys used as evidence in litigation, and Prodege specifically is recognized as a reliable panel company.²⁰

Prodege utilizes appropriate industry procedures for ensuring the integrity and quality of its panels. Through the following techniques, Prodege employs specific process behavior, pattern analysis, statistics and algorithms to ensure top quality data:

- RelevantID to certify panelists by gathering a large number of data points from a respondent's computer to create a unique digital print in order to verify the participant is real, unique, and fraud free
- Device fingerprinting to connect online identities to real-world identity in order to gather continued knowledge of user's behavior.
- Verifying IP address against physical address
- Email verification and two-step (double opt-in) authentication process
- Device reputation ensuring respondents' devices have not been linked to fraudulent activity
- Mobile verification via unique mobile numbers ensuring respondents are who they say they are

Such panel-level checks are well-accepted to contribute to the reliability of a sample of online panelists.²¹

²⁰ Id. at 293-295. Panel surveys are a form of non-probability survey. Almost all surveys submitted as evidence in litigation are non-probability surveys, most involving the use of online panels. Id. at 308 (Experts "thus nearly always use nonprobability surveys of opt-in internet panels, which are widely recognized as sufficiently reliable for litigation purposes."); 6 J. Thomas McCarthy, McCarthy on Trademarks & Unfair Competition Sec 32:165 (5th ed. 2019) ("almost all courts" have found non-probability surveys "sufficiently reliable to be admitted into evidence.")

²¹ Kugler and Henn at 300-301.

Additionally, Prodege profiles its panelists and keeps up to date on standard demographics, such as age, gender and region.

A sampling plan was carefully structured in order to represent the demographics of relevant customers – i.e. consumers of the relevant types of women’s and men’s clothing and footwear. Throughout the survey, I monitored the actual rate of qualification within each individual age and gender group. I then calibrated these individual incidence rates against U.S. Census data by age and gender and used that information to establish age and gender quotas for the final sample size. This yields an ending sample for each group that is reasonably representative of prospective purchasers of the type of clothing shown for that group. The following tables display the final proportion of sample achieved by age and gender for each survey group.

Groups 1, 2, and 3, which viewed women’s clothing, were comprised mostly of female respondents, as female respondents had much higher rates of answering that they purchase women’s clothing items. The following table displays the final proportion of sample achieved by age for each of these Groups:

Final Number of Respondents by Age & Gender in Groups 1, 2 and 3						
Group	Test 1 (N=150)	Control 1 (N=150)	Test 2 (N=150)	Control 2 (N=150)	Test 3 (N=150)	Control 3 (N=150)
Males age 16 – 24	4.0%	4.7%	4.0%	4.0%	3.3%	4.0%
Males age 25 – 34	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Males age 35 – 44	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%
Males age 45 – 54	5.3%	4.7%	4.7%	5.3%	4.7%	5.3%
Males age 55+	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%
Females age 16 – 24	14.0%	14.0%	14.0%	14.0%	14.0%	14.0%
Females age 25 – 34	13.3%	13.3%	13.3%	13.3%	13.3%	13.3%
Females age 35 – 44	14.0%	14.0%	14.0%	14.0%	14.0%	14.0%
Females age 45 – 54	14.0%	14.0%	14.0%	14.0%	14.0%	14.0%
Females age 55+	20.0%	19.3%	20.0%	20.0%	20.0%	20.0%
Other age 16 – 24	0.7%	0.7%	1.3%	0.7%	1.3%	0.7%
Other age 25 – 34	-	0.7%	-	-	0.7%	-

Groups 4, 5, 6 and 7 which viewed men's clothing, were comprised mostly of male respondents, as male respondents had much higher rates of answering that they purchase men's clothing items. The following table displays the final proportion of sample achieved by age for each of these Groups:

Final Number of Respondents by Age & Gender in Groups 4, 5, 6 and 7								
Group	Test 4 (N=150)	Control 4 (N=150)	Test 5 (N=150)	Control 5 (N=150)	Test 6 (N=150)	Control 6 (N=150)	Test 7 (N=150)	Control 7 (N=150)
Males age 16 – 24	13.3%	13.3%	12.7%	12.7%	14.0%	14.0%	13.3%	13.3%
Males age 25 – 34	14.0%	14.0%	14.0%	14.0%	14.7%	14.7%	14.0%	14.0%
Males age 35 – 44	13.3%	13.3%	14.0%	14.0%	14.7%	14.7%	14.0%	14.0%
Males age 45 – 54	14.7%	14.7%	14.7%	14.7%	16.7%	16.7%	14.7%	14.7%
Males age 55+	18.0%	18.0%	18.0%	18.0%	14.0%	12.7%	17.3%	16.7%
Females age 16 – 24	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Females age 25 – 34	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Females age 35 – 44	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%
Females age 45 – 54	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%	5.3%
Females age 55+	7.3%	7.3%	7.3%	7.3%	7.3%	7.3%	7.3%	7.3%
Other age 16 – 24	0.7%	0.7%	0.7%	0.7%	0.0%	0.7%	0.7%	0.7%
Other age 25 – 34	-	-	-	-	-	0.7%	-	0.7%

The following table displays the final proportion of sample achieved by age for Group 8 which saw the running shoe:

Final Number of Respondents by Age & Gender in Group 8		
	Test Group 8 (N=150)	Control Group 8 (N=150)
Males age 16 – 24	8.7%	8.0%
Males age 25 – 34	9.3%	9.3%
Males age 35 – 44	8.7%	8.7%
Males age 45 – 54	9.3%	9.3%
Males age 55+	11.3%	11.3%
Females age 16 – 24	9.3%	9.3%
Females age 25 – 34	9.3%	9.3%
Females age 35 – 44	9.3%	9.3%
Females age 45 – 54	10.0%	10.0%
Females age 55+	13.3%	13.3%
Other age 16 – 24	0.7%	0.7%
Other age 25 – 34	0.7%	0.7%
Other age 35 – 44	-	0.7%

This methodology is frequently used in market research and well-accepted to produce a representative sample of the relevant universe – here, actual or prospective consumers of the types of products put out by Thome Browne bearing the multi-stripe patterns at issue.²²

Survey invitations were sent across the U.S. in geographic proportion to Census data. The following table displays the final proportion of sample achieved by region:

²² Kugler and Henn at 309-310.

Final Number of Respondents by Region		
N=2400	N	%
Northeast	492	20.5%
Midwest	519	21.6%
South	909	37.9%
West	480	20.0%

INTERVIEWING PROCEDURES

The online survey was programmed and hosted by Prodege, a company specializing in web survey programming and data collection and processing. My staff and I thoroughly tested the programmed survey prior to any potential respondents receiving the invitation to participate in the survey.

DATA PROCESSING

Data was collected by Prodege, LLC, and made available to Hal Poret, LLC through an electronic portal on an ongoing basis. The data set showing respondents' answers to all questions is provided in Appendix D.

DOUBLE-BLIND INTERVIEWING

The study was administered under "double-blind" conditions. That is, not only were the respondents kept uninformed as to the purpose and sponsorship of the study, but the service involved in providing the sample and administering the online interviews (Prodege) was similarly "blind" with respect to the study's purpose and sponsorship.

INTERVIEWING PERIOD

Interviewing was conducted from July 7, 2022, through July 20, 2022.

QUALITY CONTROL

Numerous measures were implemented to ensure a high level of quality control and validation with respect to respondents taking the survey.

In the context of online surveys, “validation” procedures are commonly used to ensure the integrity of the process. Upon initially entering the survey, all respondents were required to pass a test to verify that each respondent is a live person. The test employed in this survey is a CAPTCHA²³ program that generates a task that humans can pass but current computer programs cannot. CAPTCHA is a well-known and widely-used tool in online survey research.

Upon successfully passing the CAPTCHA test, respondents were then asked to enter their year of birth and then their gender. This information was checked against the sample provider’s (Prodege’s) demographics on record for each respondent and any respondent providing an incorrect or inconsistent birth year and/or gender was unable to continue to the main survey. Such measures are commonly implemented and well-accepted to validate the identity and characteristics of the panelist and that the panelist is paying attention and entering information accurately.²⁴

Additionally, respondents were then asked to select their age range as a redundancy check – i.e., a measure to ensure that respondents enter consistent information and to exclude those who contradict a previous answer.

Respondents who selected an age range inconsistent with their year of birth were unable to continue with the survey.²⁵

²³ CAPTCHA is an acronym for “Completely Automated Public Turing test to tell computers and Humans Apart.”

²⁴ Kugler and Henn at 300-301; Neal at 282.

²⁵ Such a question is recognized as increasing the reliability of the process. Neal at 282.

These combined steps ensured that the survey was being taken by an actual live person and that each person was paying a certain level of attention to the survey questions and taking a certain level of care in entering responses.

All respondents were also asked to select any social media services they have used in the past month. Respondents could select as many as applied to them from a list of nine options, including one fictitious name: Dusan; or “None of these.” Respondents who selected “Dusan” were identified as “yea-sayers” and unable to continue with the survey.²⁶

As indicated earlier, when respondents were asked to select from a list of products, a fictional choice “Chutil cover or box,” was included to assist in weeding out potential respondents who were not paying attention or answering indiscriminately or inaccurately. Anyone who selected this option was excluded from the survey.

The following question was also asked and permitted additional screening out of respondents who were paying insufficient attention or clicking responses indiscriminately:

²⁶ “Yea-sayers” in surveys are typically defined as respondents who answer affirmatively to questions, regardless of their belief. Neal at 277.

For quality assurance, please type the word "survey" in the blank next to the "Other" box below and then click to continue.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Other _____

Respondents who selected “other” and typed a response in the blank continued with the survey. Those who failed to follow the instructions were excluded.²⁷

A review was conducted of all open-ended answers, including responses to this question and respondents who failed to follow instructions for this question, or gave other non-responsive or nonsense answers to open-ended questions were removed from the final data. This is also a standard practice that increases the reliability and quality of the data.²⁸

Respondents were then also asked to carefully read these instructions:

- * Please take the survey in one session without interruption.
- * Please keep your browser maximized for the entire survey.
- * While taking the survey, please do not consult any other websites or other electronic or written materials.
- * Please answer all questions on your own without consulting any other person.

²⁷ This quality control question is recognized as ensuring respondents are paying sufficient attention and providing thoughtful answers and are not rushing too quickly through a survey. Kugler and Henn at 302; Neal at 282.

²⁸ Kugler and Henn at 302-303.

- * If you normally wear eye glasses or contact lenses when viewing a computer screen, please wear them for the survey.

Respondents confirmed they understood and agreed to these instructions before continuing to the main section of the survey.

Upon completion of the main survey, all respondents were asked a final quality assurance question to ensure they were still paying close attention to the survey and not checking answers indiscriminately. Respondents were instructed to select one of the following randomized options:²⁹

- North
- South
- East
- West

All of the final respondents selected the answer choice they were instructed to select.

These various validation and quality control measures collectively ensured the integrity and reliability of the process and the sample of panelists by ensuring that only respondents who are paying a sufficient degree of attention and providing appropriate and responsive answers are included in the final data pool.³⁰

²⁹ The survey program randomized which option each respondent was instructed to select.

³⁰ No respondents were excluded from the survey based on the amount of time they took to complete the survey. The above-discussed validation and quality control procedures are more scientific, superior methods of weeding out respondents who rush through a survey too quickly than attempting to judge the quality of an interview based solely on the amount of time the respondent took. In fact, recent research suggests that the amount of time respondents take to complete a survey is a poor indicator of data quality that is not an effective basis for evaluating an interview. Robert Walker,

An initial “pilot” or “pretest” phase of the survey was first carried out among a smaller sample of respondents, and the data was analyzed to test the reliability of the survey questionnaire and methodology, and to ensure that there were no problems with the survey. This is well-accepted to increase the reliability of the process by providing the opportunity to detect any unanticipated problems with the survey during the earliest portion of data collection.³¹ My analysis of the initial wave of results indicated that the survey functioned properly. Accordingly, no changes were made, and the survey was completed as initially designed. The initial/pilot wave of interviews is included in the final data set.

Raymond Pettit & Joel Rubinson, *The Foundations of Quality Initiative: A Five-Part Immersion into the Quality of Online Research*, 49 J. Advert. Res. 464, 471 (2009) (“..recent research suggests that total interview time may be a biased indicator of data quality.”) Given that time of completion can be a poor indicator of data quality, that litigation surveys are relatively short surveys that do not raise substantial concerns about respondent inattention, and that the validation and quality control procedures detailed above are highly effective at addressing any data quality concerns, it is recognized that respondents not recommended to routinely exclude respondents from surveys based on time of completion. Kugler and Henn at 305.

³¹ See Ross, Ivan, “The Use of Pilot Tests and Pretests in Consumer Surveys, Trademark and Deceptive Advertising SURVEYS: Law, Science, and Design, eds. Shari Seidman Diamond and Jerre B. Swann (2d. Ed. 2022). It is standard to accomplish such a “pilot” or “pretest” function by starting the survey on a small scale and evaluating the resulting data quality before continuing to complete the survey, as opposed to conducting an entirely separate pilot/pretest survey that is not part of the main survey to be disclosed in the expert report. Kugler and Henn at 299 Fn 24 (“Pretesting need not take the form of a separate or formal “pilot” survey. Often, researchers will launch a survey and pause data collection after the first 20 or so respondents have completed the questionnaire to evaluate whether respondents understand the questions. If the results suggest that respondents understand, the survey can continue; if respondents appear to misunderstand portions of the questionnaire, it can (and should) be modified before being re-launched.”).

DETAILED FINDINGS

I) Gross Confusion Rate -Test Group 1 Result

Company or Brand that Makes or Puts Out the Clothing

31.3% of Test Group 1 respondents (47 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the clothing.

The following table displays the verbatim answers provided by these 47 respondents along with their reasons for naming adidas:

Test Group 1 – Adidas Makes or Puts Out the Clothing Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
63	adidas	the 3 stripes ³²
376	Adidas	The three stripes
395	Adidas	Style of black and white stripes
447	Addidas	The three stripes
569	addidas	lines
758	Adidas	Looks like athletic wear, the stripes are something Adidas does a lot.
809	Adidas because of the stripes	Adidas has stripes like are similar
909	Adidas	It is striped athletic wear.
941	adidas	The stripes on the clothing
994	Adidas	The color scheme and trim
1283	Adidas	3 stripe logo
1412	Adidas	White stripes
1580	The stripes on the arm and leg suggests Adidas brand.	Adidas is known for having a series of stripes somewhere on their clothing or

³² This respondent and numerous other respondents answered that the product shown had three stripes.

		footwear as part of their brand logo and brand association.
1704	Adidas only because of the stripes	It looks like a sport wear like sweatpants and a sweater
1783	Adidas's	The 3 stripes on the clothes
1801	adidas	i believe there were three white stripes which adidas usually has on their clothing.
1989	adidas	because it is black and has stripes on the sleeves
2855	Adidas	The three white stripes
3032	Adidas because it has 3 stripes. It looks good, I would wear it.	Because it had an adidas logo
3045	Adidas	the three stripes on the sweat pants and sweat shirt.
3366	Adidas	The style
3368	Adidas	The three stripes look like it could be Adidas.
3424	Adidas	Logo
3501	addias	the lines on the side
3586	Adidas	The brand tag
3636	It looked like adidas because it had three stripes	I noticed three white stripes on the arms and legs
3662	Adidas	The style
3739	I loved it. It looks like something I would wear.	Adidas makes quality products
3763	Adidas	The three stripes make me think it's Adidas
3790	Adidas	The markings on the clothing remind me of adidas.
3838	Addidas	The black and white and the stripes.
3849	adedess	the stripes on it
3871	Adidas	The three stripes looks like their logo
3956	adidas	Three lines
4013	Adidas	Three stripes
4129	Addidas	Stripes
4148	Adidas	The stripes
4238	Adidas because of the stripes	Because of the stripes

4333	Adidas	The stripes on the clothing
4434	Adidas	The material of it.
4448	Addias	Stripes
4691	Addidas because of the stripes	Adidas always has 3 stripes as their design
5163	Adidus	the emblem
5236	Adidas	Looks like something they would have.
5469	addidas	stripes
5487	adidas	the stripes
5490	Adidas	the stripes

Affiliated With, or Sponsored or Approved by

40.0% (60 out of 150) of Test Group 1 respondents thought the clothing is affiliated with, or sponsored or approved by, another company or brand.

Nine additional respondents identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 9 additional respondents along with their reasons for naming adidas:

Test Group 1 - Affiliated With, or Sponsored or Approved by Adidas Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
265	Adidas	3 stripes are common
837	Adidas	I think the logo is on the jacket and pants.
1020	Adidas	Makes track suits
1866	Adidas	Na
3431	adidas	the stripes and colors and genre
3478	Adidas	Only thing I can think of
3802	Addidas	oh, come on... you have asked basically the exact same question three times now. The three stripes remind me of them
4030	Adidas	The color
4181	Adidas	Three Stripes

Adding these 9 respondents to the previous 47 respondents that named adidas, brings the gross confusion rate in Test Group 1 to 37.3% (56 out of 150).

II) Noise Rate – Control Group 1

Company or Brand that Makes or Puts Out the Clothing

2.7% of Control Group 1 respondents (9 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the clothing.

The following table displays the verbatim answers provided by these 9 respondents along with their reasons for naming adidas:

Control Group 1 – Adidas Makes or Puts Out the Clothing Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
232	Adidas?	It had white contrast on black. Characteristic for adidas.
324	Addida	Addidas
492	adidas	they makesports clothes
596	Adidas	The style of the clothing
1433	Adidas	Looks like clothing I purchased
2873	Adidas	Just a guess
3025	addidas	because it was colored black
3743	Adidas	Just guessing
3821	adidas	sport wear

These 9 respondents constitute an initial 2.7% noise rate in Control Group 1.

Affiliated With, or Sponsored or Approved by

32.0% (48 out of 150) of Control Group 1 respondents thought the clothing is

affiliated with, or sponsored or approved by, another company or brand.

Eight additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these respondents along with their reasons for naming adidas:

Control Group 1 – Affiliated With, or Sponsored or Approved by Adidas Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
1927	adidas	athletic clothing
2309	Adidas	It looked like adidas design
3314	Adidas	Adidas definitely puts out sporty two-pieces.
3580	Adidas	They make products like this
4296	Adidas	Sportswear
4342	Adidas	It looks athletic
4780	adidas	black with white stripes
5388	Adidas	Their yupr

Adding these 8 respondents to the previous 9 respondents that named adidas, brings the total noise rate in Control Group 1 to 11.3% (17 out of 150).

III) Group 1 Net Confusion Result

Deducting the 11.3% noise rate in Control Group 1 from the gross confusion rate of 37.3% in the corresponding Test Group results in a final net post-sale confusion rate of 26.0% for the Thom Browne women's hoodie sweatshirt and compression sweats/tights with respect to adidas.³³

Group 1 Net Confusion Rate	
Test Group 1 Gross Confusion Rate	37.3%
Control Group 1 Noise Rate	11.3%
Net Group 1 Confusion Rate	26.0%

IV) Gross Confusion Rate -Test Group 2 Result

Company or Brand that Makes or Puts Out the Hoodie Sweatshirt

38.0% of Test Group 2 respondents (57 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the hoodie sweatshirt.

³³ An additional 3 respondents in Test Group 1 mentioned adidas when initially asked what company or brand they believe makes or puts out the clothing they were shown; however, these respondents expressed significant uncertainty, doubt, or indicated they were guessing. To be conservative in my findings, I did not count these respondents toward my overall confusion rate. No additional respondent in Control Group 1 mentioned adidas but expressed uncertainty. An additional 3 respondents in Test Group 1 named adidas in addition to another company or brand when initially asked what company or brand they believe makes or puts out the clothing they were shown. To be conservative in my findings, I did not count these respondents who named multiple companies/brands in my overall confusion rate since they did not exclusively name adidas as the company or brand. One additional respondent in Control Group 1 mentioned adidas along with another company or brand in response to the initial open end. If I were to include these respondents in my total count of adidas mentions, the net confusion rate in Group 1 would increase by a margin of 3.3%. The ID numbers of all respondents discussed in this and subsequent footnotes are shown in Appendix E.

The following table displays the verbatim answers provided by these 57 respondents along with their reasons for naming adidas:

Test Group 2 – Adidas Makes or Puts Out the Hoodie Sweatshirt		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
139	Adidas	The three stripes on the arm
185	Adidas	The stripes on the sleeve
224	adidas	the white stripes
413	I believe the brand is Adidas. The stripes on the sides of the arms give off an Adidas kind of vibe.	It's the stripes on the sides of the arms.
485	adidas	the 4 stripes
508	Adidas	It seems like it has 3 stripes just like the brand
953	Adidas	It looks like their logo on the arm
1035	Addidas	The 3 stripes
1289	adidas	the stripes on the sleve
1554	Adidas	The logo
1593	Adidas	The stripes on the sweatshirt
1697	Adidas	The two white stripes on the side
1701	adidas	the three stripes on the sleeve and the longer length
1920	Adidas	The stripes on the sleeves
1946	Adidas	The white stripes and the style remind me of adidas clothing
1983	Adidas	Because the lines
2231	Adidas	The shorts and shoes were adidas from what I remember
2828	Adidas	It looked like it had stripes
2861	Addidas	looks like a product they make
2897	Adidas	Logo
3165	Adidas	The stripes
3231	Adidas	The lines on the sleeve
3271	Adidas	Because of the stripes or bands on the sweatshirt
3274	adidas	just looks like adidas

3315	Adidas	Because of the stripes on the sleeve
3346	Adidas	Color or designed
3360	Adidas	Three white lines
3432	Adidas	The stripes on the sleeves
3496	It look like Adidas	They make hoodies like that
3573	Adidas	It looks like their style
3600	Adidas	The style
3640	Adidas	Similar style to hoodies I own by Adidas
3675	Adidas	The 3 stripes on thr sleeve
3681	Adidas	White Striping
3783	adidas	the white stripe on the sleeve and black color
3826	Adidas	It looks like an adidas brand clothing.
3833	Adidas	It has 3 stripes on the arm
3914	Adidas. This looks like something they would make.	The stripes are characteristic of Adidas products. That's what makes me think it could be by them.
3945	adidas	the stripes on the sleeves
4027	Adidas	Because of the three stripes on the sleeve
4098	Adidas	Strips on it
4110	Addidas	Stripes on sleeve.
4147	Adidas	3 stripes
4149	Adidas	It doesn't have any clear images of other brands and it has the look of the adidas company
4189	Adidas	Because of the stripes on the side of the hoodie
4224	I believe Adidas makes the hoodie sweatshirt.	Because of the 3 white bands on the left sleeve, which are indicative of the Adidas logo.
4247	Adidas	The symbols on the side of the arm
4316	Mabe addias	The stripes
4440	Adidas	The three stripes
4470	I think it is an Adidas hoodie.	The stripes on the arm of the hoodie reminded me of the brand.
4554	Maybe adidas	The three stripes on the arm
4690	addidas	cool
5254	adidis	the colors look like it would be from there
5319	Adidas i think	the 4 white strips
5468	Adidas	The 4 white stripes on the left arm.
5531	adidas	it has the white stripes on it
5700	I think is Adidas	For the white straps I think so

Affiliated With, or Sponsored or Approved by

30.7% (46 out of 150) of Test Group 2 respondents thought the hoodie sweatshirt is affiliated with, or sponsored or approved by, another company or brand.

Eleven additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 11 respondents along with their reasons for naming adidas:

Test Group 2 – Affiliated With, or Sponsored or Approved by Adidas Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
58	Adidas	The way it's styled
540	Adidas's	The stripes
582	Adidas	The logo
681	Addias	Fits with the brand
906	Adidas	The stripes
1037	Adidas	Stripes
1790	addidas	the stripes
1844	Addidas	Looks like something addidas would make
3354	adidas	maybe that square on the lower part of the sweatshirt
3698	Adidas	Idk
4252	Adidas	The stripes

Adding these 11 respondents to the previous 57 respondents that named adidas, brings the gross confusion rate in Test Group 2 to 45.3% (68 out of 150).

V) Noise Rate –Control Group 2

Company or Brand that Makes or Puts Out the Hoodie Sweatshirt

2.7% of Control Group 2 respondents (4 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the hoodie sweatshirt.

The following table displays the verbatim answers provided by these 4 respondents along with their reasons for naming adidas:

Control Group 2 – Adidas Makes or Puts Out the Hoodie Sweatshirt Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
16	ADIDAS	IT LOOKS LIKE THEIR STYLE
917	adidas	looks like their type of hoodie
1974	adidas	theres a stripe on the sleeve
2971	Adidas	It seems like a design they'd make.

These 4 respondents constitute an initial 2.7% noise rate in Control Group 2.

Affiliated With, or Sponsored or Approved by

32.7% (49 out of 150) of Control Group 2 respondents thought the hoodie Sweatshirt is affiliated with, or sponsored or approved by, another company or brand.

Six additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 6 respondents along with their reasons for naming adidas:

Control Group 2 – Affiliated With, or Sponsored or Approved by Adidas Verbatim Answers		
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Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
486	Adidas	It reminds me of their look.
3124	addias	colors of the hoodie
3556	Adidas	Sporty looking
3936	Adidas	The sweatshirt looks like it may be from adidas.
5044	addidas	i believe its affiliated with a running shoe type company or athletic company
5419	Adidas	The stripe on the sleeve

Adding these 6 respondents to the previous 4 respondents that named adidas, brings the total noise rate in Control Group 2 to 6.7% (10 out of 150).

VI) Group 2 Net Confusion Result

Deducting the 6.7% noise rate in Control Group 2 from the gross confusion rate of 45.3% in the corresponding Test Group results in a final net post-sale confusion rate of 38.7% for the Thom Browne women's hoodie sweatshirt with respect to adidas:³⁴

Group 2 Net Confusion Rate	
Test Group 2 Gross Confusion Rate	45.3%
Control Group 2 Noise Rate	6.7%
Net Group 2 Confusion Rate	38.6%

³⁴ One additional respondent in Test Group 2 mentioned adidas when initially asked what company or brand they believe makes or puts out the clothing they were shown; however, this respondent expressed significant uncertainty, doubt, or indicated they were guessing. Similarly, 1 additional respondent in Control Group 2 mentioned adidas but expressed uncertainty. Three additional respondents in Test Group 2 named adidas in addition to another company or brand when initially asked what company or brand they believe makes or puts out the clothing they were shown. Similarly, 1 additional respondent in Control Group 2 mentioned adidas along with another company or brand in response to the initial open end. If I were to include these respondents in my total count of adidas mentions, the net confusion rate in Group 2 would increase by a margin of 1.3%.

VII) Gross Confusion Rate –Test Group 3 Result*Company or Brand that Makes or Puts Out the Clothing*

30.0% of Test Group 3 respondents (45 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the clothing.

The following table displays the verbatim answers provided by these 45 respondents along with their reasons for naming adidas:

Test Group 3 – Adidas Makes or Puts Out the Clothing		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
286	Adidas	The stripes.
380	Adidas	The logo and it stated it on the shirt
444	Adidas	The design on the clothes
482	Addidas	The stripes and because its athletic
507	It seems like Adidas	Because of the stripes on the clothing
515	Adidas	The way it looks
1088	Adidas	The three white stripes
1136	Adidas	The white lines in the the short and tee
1176	Adiddas	Branding looked familiar
1383	Adidas	The logo looks like the triangle/bars
1568	Addia's	Red, white and black striped logo looks familiar
1632	Adidas	The lines
1642	Adidas	The three lines and the fact it is workout style clothing.
1713	addidas	the stripes on the shirt and shorts
1748	adidas because of the white stripe	white stripe
1887	Adidas	The streamlined look and stripes on sleeves and shorts
1910	Adidas	Ir looks like something they would design and create

2833	I think adidas makes the clothing	I think Adidas makes the clothing because of the logo
2996	Adidas	It looks to be made up of premium products
3050	Adidas	Nothing to say about it
3190	Adidas	It seems similar to products I've seen from them in the past with the looser fitting shorts leg & compression style tops.
3299	Adidas they make sport clothing like this kind so it's probably theirs	Because of the colors and the way they look
3305	Adidas	Same style as they make.
3428	Adidas	I saw stripes
3489	Addidas	The style of clothing
3568	Adidas if I had to guess	Three white stripes
3605	Adidas	Three stripes
3620	Adidas	The white strips on the sleeve and shorts
3626	Adidas	The symbols
3642	Adidas	Not sure, just seems like their brand
3693	Adidas	Because of the triple stripe
3767	Adidas	The 3 stripes
3815	adidas	It's workout apparel and Adidas was the first that came in my thoughts, probably because of the stripes.
3869	Adidas	It has tge three strioes
3983	Adidas	The white stripes are an adidas classic
4138	Adidas	The clothing looks like their style.
4200	Adidas	The stripes on clothing looks familiar
4301	Adidas's	The white stripes on the side.
4587	adidas	stripes
5015	Adidas	The stripes on the clothing
5219	Addidas	The white stripes
5438	Adaids	Stripes
5534	Addidas	The three stripes
5540	addidas	athletic wear with the three white stripes
5572	adidas	stripes on sleeves

Affiliated With, or Sponsored or Approved by

38.7% (58 out of 150) of Test Group 3 respondents thought the clothing is

affiliated with, or sponsored or approved by, another company or brand.

Twelve additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 12 respondents along with their reasons for naming adidas:

Test Group 3 – Affiliated With, or Sponsored or Approved by Adidas		
Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
71	Adidas	The stripe line on the side of the shorts resemble adidas
159	Adidas	It just came to mind
449	adidas	none
1543	Addidas	They use more cloth than DTI fit material
1638	Adidas	It has a good reputation
2038	Adidas	The three stripe blocks on the side
3542	Adidas	Style
4234	Adidas	Sports
4382	Adidas	Sports
4635	adidas	athletic wear
5432	Adidas	Guess
5728	adidas	The stripes make it look it from this brand

Adding these 12 respondents to the previous 45 respondents that named adidas, brings the gross confusion rate in Test Group 3 to 38.0% (57 out of 150).

VIII) Noise Rate –Control Group 3

Company or Brand that Makes or Puts Out the Clothing

7.3% of Control Group 3 respondents (11 out of 150) identified adidas when

initially asked what company or brand they believe makes or puts out the clothing.

The following table displays the verbatim answers provided by these 11 respondents along with their reasons for naming adidas:

Control Group 3 – Adidas Makes or Puts Out the Clothing		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
1219	adidas from the looks of it	The look and style of the clothing
1571	Adidas	I have bought many Adidas products/clothing through the years and to me, these images of clothing look like Adidas products.
1717	Adidas	Small white stripes on the shorts and the shirt
1771	Adidas	The white stripe on the sleeves
1802	Adidas	The lines
3281	Addidas	The quality of the clothing
3549	Addias	It is a good quality brand
4125	Adidas	Stripes
4267	adidas	I have seen similar designs on their website
4471	Adidas	The colors it is sports clothing
4561	Adias	It has sporting clothes

These 11 respondents constitute an initial 7.3% noise rate in Control Group 3.

Affiliated With, or Sponsored or Approved by

35.3% (53 out of 150) of Control Group 3 respondents thought the clothing is affiliated with, or sponsored or approved by, another company or brand.

Nine additional respondents then identified adidas when asked what other

company or brand.

The following table displays the verbatim answers provided by these 9 respondents along with their reasons for naming adidas:

Control Group 3 – Affiliated With, or Sponsored or Approved by Adidas		
Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
83	Adidas	Just looks like thrirvdesign
385	Adidas	Strip and arms
777	Adidas	Also athletic wear
1068	Adidas	Sportswear
3674	Adidas	Only black and white and red.
3776	Addidas	No reason
3845	Adidas	Sporting goods normally partner with nike
3963	Addidas	Because it is a sport brand
5200	Adidas	Possibly saw what could have been their trade mark on the sides

Adding these 9 respondents to the previous 11 respondents that named adidas, brings the total noise rate in Control Group 3 to 13.3% (20 out of 150).

IX) Group 3 Net Confusion Result

Deducting the 13.3% noise rate in Control Group 3 from the gross confusion rate of 38% in the corresponding Test Group results in a final net post-sale confusion rate of 24.7% for the Thom Browne women's compression tee shirt and running shorts with respect to adidas:³⁵

³⁵ An additional 2 respondents in Test Group 3 mentioned adidas when initially asked what company or brand they believe makes or puts out the clothing they were shown; however, these respondents expressed significant uncertainty, doubt, or indicated they were guessing. Similarly, 1 additional respondent in Control Group 3 mentioned adidas but expressed uncertainty. An additional 6 respondents in Test Group 3 named adidas

Group 3 Net Confusion Rate	
Test Group 3 Gross Confusion Rate	38.0%
Control Group 3 Noise Rate	13.3%
Net Group 3 Confusion Rate	24.7%

X) Gross Confusion Rate –Test Group 4 Result

Company or Brand that Makes or Puts Out the Clothing

32.0% of Test Group 4 respondents (48 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the clothing.

The following table displays the verbatim answers provided by these 48 respondents along with their reasons for naming adidas:

in addition to another company or brand when initially asked what company or brand they believe makes or puts out the clothing they were shown. Similarly, 3 additional respondents in Control Group 3 mentioned adidas along with another company or brand in response to the initial open end. If I were to include these respondents, the net confusion rate in Group 3 would increase by a margin of 2.7%.

Test Group 4 – Adidas Makes or Puts Out the Clothing		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
55	Adidas	Something about the look
215	Adidas	The stripes
233	adidas	the stripes
442	addis	I think that the stripe is part of their logo
525	Adidas	Looks like something they would putout
576	Adidas	The three stripe's
592	Adias because of the lines	Because of the color scheme and the 4 lines
638	Adidas	The stripes
641	Adidas	The strips
667	Adidas. It was there logo	It was their logo
890	Adidas	Because of the stripes
1000	Adidas	It had 3 distinct stripes on them and that's similar to the adidas logo.
1309	The company is adidas	The three stripe is adidas logo
1569	Addidas	the logo
1737	Adidas	The four stripe lines reminds me of the adidas logo
1823	Adidas	The lines
1970	Adidas	The stripes for the logo
2007	Adidas	The red and blue stripes
2292	Adidas	Athletic clothes, fashionable
3092	I think it may be Adidas	The design and the white stripe on the left leg
3114	Adidas	The stripes
3125	Adidas	The lines/stripes were what made it appear to be adidas
3127	The lines make me think Adidas	The lines
3244	addidas	I see the three stripes
3250	adidas	the strips
3345	Adidas	The 3 lines
3381	Adidas	The branding
3624	Adidas	Three stripes design
3654	I think it's adidas's brand of clothing	Because adidas is pretty much the only brand I know have the stripes

3683	adidas	stripes
3694	Adidas is the brand	The three stripes was the give away
3726	Adidas	Their logo is a stripe like that
3848	Adidas	The striping on the clothing
3865	addidas	The logos
3961	Adidas	Three strips
4000	adidas	It looked like it came from that brand
4054	Adidas	The stripes
4104	Adidas because there were stripes on the shirt and shorts and no other company has that same type of design like Adidas has.	The stripes that were on the side of the shorts and shirt because I haven't seen a company with similar designs with stripes.
4335	Adidas	The logo and it's active wear
4378	Adidas	The trademark 3 stripes
4801	Addidas	Thd logo
5084	Adidas	I thought I saw the Adidas three stripe logo
5100	Adidas	The logo of Adidas appears to be in the clothes
5114	Addidas	Looks like something they would put out
5189	Adidas	the Strips
5235	Addias	The stripes.
5306	Addias	Triple stripe
5514	adidas	three stripes

These 48 initial mentions of adidas in Test Group 4, result in a 32.0% initial confusion rate.

Affiliated With, or Sponsored or Approved by

34.7% (52 out of 150) of Test Group 4 respondents thought the clothing is affiliated with, or sponsored or approved by, another company or brand.

Ten additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these __ respondents along with their reasons for naming adidas:

Test Group 4 – Affiliated With, or Sponsored or Approved by Adidas		
Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
36	Adidas	There are stripes
76	Adidas	The logo looks the same way
112	Adidas	Just the 3 white pine pattern and the usual white and grey color scheme
850	Adidas	The stripes seem like something they would do.
1523	Adidas	great clothes
1745	Adidas	Stripes on pants and shirt
2067	Adidas	Very showy and everyone knows
3880	addidas	The lines on the clothing are similar to the addidas lines in their logo.
4552	Adidas	Had the brands signature three white stripes
5263	Adidas	The stripes made me think it's made by them

Adding these 10 respondents to the previous 48 respondents that named adidas, brings the gross confusion rate in Test Group 4 to 38.7% (58 out of 150).

XI) Noise Rate – Control Group 4

Company or Brand that Makes or Puts Out the Clothing

1.3% of Control Group 4 respondents (2 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the clothing.

The following table displays the verbatim answers provided by these 2 respondents along with their reasons for naming adidas:

Control Group 4 – Adidas Makes or Puts Out the Clothing		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
2961	Adidas	I use this brand and it seems to be similar
4061	Adidas	Just based on the design and color

These 2 respondents constitute an initial 1.3% noise rate in Control Group 4.

Affiliated With, or Sponsored or Approved by

28.7% (43 out of 150) of Control Group 4 respondents thought the clothing is affiliated with, or sponsored or approved by, another company or brand.

Three additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 3 respondents along with their reasons for naming adidas:

Control Group 4 – Affiliated With, or Sponsored or Approved by Adidas		
Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
1595	Addas	THe mark on one leg reminded me of Addas
4589	Adidas	I could see Adidas having a similar style
5249	Adidas	It looks like something they would put out.

Adding these 3 respondents to the previous 2 respondents that named adidas, brings the total noise rate in Control Group 4 to 3.3% (5 out of 150).

XII) Group 4 Net Confusion Result

Deducting the 3.3% noise rate in Control Group 4 from the gross confusion rate of 38.7% in corresponding Test Group 4 results in a final net post-sale confusion rate of 35.3% for the Thom Browne men's tee shirt and sweatpants with respect to adidas:

Group 4 Net Confusion Rate	
Test Group 4 Gross Confusion Rate	38.7%
Control Group 4 Noise Rate	3.3%
Net Group 4 Confusion Rate	35.4%

XIII) Gross Confusion Rate –Test Group 5 Result

Company or Brand that Makes or Puts Out the Shorts

30.0% of Test Group 5 respondents (45 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the shorts.

The following table displays the verbatim answers provided by these 45 respondents along with their reasons for naming adidas:

Test Group 5 – Adidas Makes or Puts Out the Shorts		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
26	Adidas	Stripes
48	Adidas	The stripes are similar to their branding
114	Adidas	The color and style and stripes
175	Adidas	The stripes
177	Adidas	The stripes make me think of their logo
470	adidas	similar design to other clothes by them
512	Adidas	Stripes
625	Adidas	The lines on the side

642	Adidas	The pattern on the shorts
1030	Adidas	The lines on the shorts
1362	Adidas	The lines in the short
1799	I believe Adidas made the shorts that I was just shown because of the stripes	The stripes on the shorts
1932	Adidas because of the way the logo and design of the shorts look	I think this is a pair of shorts made by adidas. I think this because of the color scheme as well as the lines on the side of the shorts
2042	Adidas	The stripe motif mainly, as well as the fact that the brand makes sportswear.
2150	I believe that the shorts were made by Adidas cause of the four stripes on the shorts.	I think that they were made by Adidas because of the four stripes which is similar to their logo and all of their shorts I've worn had that on it.
2225	addais	They tend to have models stand like that.
2387	Adidas is the brand of the shorts because of the striped design.	The striped design on one of the legs.
2869	Adidas	The stripes
3036	Addidas	The 3 white linea
3051	adidas	the stripes
3093	Addidas	Stripes
3131	Addias?	Kinda the pattern on the shorts
3186	Adidas	The stripes on the shorts
3199	Addidas	Its a minimalist style like adiddas.
3229	Adidas	The three stripes
3475	adidas	the stripes
3536	Adidas	Just looks like their style to me
3708	I would guess adidas	Just by the white stripes on the right side
3938	addidas	strips on it
4282	Addias,	The strips looks like their logo
4313	Adiddas, becuase there are 3 stripes	There are 3 stripes
4369	Adidas	The stripes
4419	I think Adidas would be the brand that makes those shorts.	The white stripes on the bottom seem to be something that Adidas usually incorporates.
4578	Adidas	The lines on the bottom

4678	Adidas	They look like athletic shorts and the lines remind me of the logo
4695	Adidas	Stripes
4732	addidas	the white stripes on the front of the shorts
4823	Addidas	The stripes on one leg.
4907	adidas	The stripes made me think it was adidas. I just had a feeling.
4917	Addidas	The stripes on the shorts
5180	Adidas	The 3 stripes on the leg of them
5186	adidas	The stripes on the leg
5272	Addidas	The little white on the sude
5280	adidas	style and colors
5412	Adidas	The stripes

These 45 initial mentions of adidas in Test Group 5, result in a 30.0% initial confusion rate.

Affiliated With, or Sponsored or Approved by

38.7% (58 out of 150) of Test Group 5 respondents thought the shorts are affiliated with, or sponsored or approved by, another company or brand.

Ten additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 10 respondents along with their reasons for naming adidas:

Test Group 5 – Affiliated With, or Sponsored or Approved by Adidas		
Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
100	Addidas	3 stripes
977	Adidas	The stripes
1714	addidas	seems like the style
2293	Addias	Sports

2929	Addidas	Other brand I know
3020	Adidas	It had stripes on the leg similar to Adidas stripes
3327	Adidas	Only brand I can think of that would make shorts that look like that
4015	Addis's	There style
4557	Adidas	The stripes on the right side reminded me of Adidas
5016	Adidas	Looks like things I have seen

Adding these 10 respondents to the previous 45 respondents that named adidas, brings the gross confusion rate in Test Group 5 to 36.7% (55 out of 150).

XIV) Noise Rate – Control Group 5

Company or Brand that Makes or Puts Out the Shorts

2.7% of Control Group 5 respondents (4 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the shorts.

The following table displays the verbatim answers provided by these 4 respondents along with their reasons for naming adidas:

Control Group 5 – Adidas Makes or Puts Out the Shorts		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
664	addidas	the fabric
3196	Adidas	It's not the same fabric that under armour outs out
4044	Adidas	Looks like something adidas would make.
5001	Adidas	The style

These 4 respondents constitute an initial 2.7% noise rate in Control Group 5.

Affiliated With, or Sponsored or Approved by

26.7% (40 out of 150) of Control Group 5 respondents thought the shorts are affiliated with, or sponsored or approved by, another company or brand.

Four additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 4 respondents along with their reasons for naming adidas:

Control Group 5 – Affiliated With, or Sponsored or Approved by Adidas		
Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
359	Adidas	Athletic too
1945	Adidas	Look high quality like my brother has
2002	Adidas	Good shoes
3911	Adidas	They look like sports shorts and this company makes those

Adding these 4 respondents to the previous 4 respondents that named adidas,

brings the total noise rate in Control Group 5 to 5.3% (8 out of 150).

XV) Group 5 Net Confusion Result

Deducting the 5.3% noise rate in Control Group 5 from the gross confusion rate of 36.7% in corresponding Test Group 5 results in a final net post-sale confusion rate of 31.3% for the Thom Browne men's shorts with respect to adidas:³⁶

Group 5 Net Confusion Rate	
Test Group 5 Gross Confusion Rate	36.7%
Control Group 5 Noise Rate	5.3%
Net Group 5 Confusion Rate	31.4%

XVI) Gross Confusion Rate –Test Group 6 Result

Company or Brand that Makes or Puts Out the Jacket

41.3% of Test Group 6 respondents (62 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the jacket.

The following table displays the verbatim answers provided by these 62 respondents along with their reasons for naming adidas:

Test Group 6 – Adidas Makes or Puts Out the Jacket
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³⁶ One additional respondent in Test Group 5 mentioned adidas when initially asked what company or brand they believe makes or puts out the clothing they were shown; however, this respondent expressed significant uncertainty, doubt, or indicated they were guessing. An additional 2 respondents in Test Group 5 named adidas in addition to another company or brand when initially asked what company or brand they believe makes or puts out the clothing they were shown. Similarly, 1 additional respondent in Control Group 5 mentioned adidas along with another company or brand in response to the initial open end. If I were to include these respondents in my total count of adidas mentions, the net confusion rate in Group 5 would increase by a margin of 1.3%.

Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
184	adidas	The stripes on the arm
285	Adidas	Looks like their products
322	My guess would be Adidas because of the stripes, but I believe they usually have 3 stripes and this jacket had 4. If it is not Adidas, I am not sure who it is that makes this jacket.	I believe that this is because of the stripes on the arm of the jacket, which is very reminiscent of the traditional Adidas striped shoes. However, I believe Adidas uses 3 stripes rather than 4, so I am not 100% sure that this is a jacket by Adidas. Still, this jacket does remind me of the Adidas type of style.
382	Adidas because of the stripes	Stripes and color
437	Adidas	The stripes
513	Adidas	The 3 white stripes on the sleeve.
693	Adidas because of the signature three stripes on the left arm	And three stripes on the left sleeve which is a signature style of Adidas
734	Adidas	The look of the jacket
756	Adidas	The lines on the jacket.
794	Addidas	Stripes on sleeves
845	addidas	the stripes
1123	Probably Adidas! It looks and matches the color scheme that Adidas usually uses on their logo, just a guess though!	Oops, I didn't know I only had to put the brand name ^^;! I think that because of <the reason I had previously listed>!
1155	Adidas	I've seen similar on their site. And it is a well known brand many people usually look to buy, so ads and promos are often shown
1158	i think it's adias because it has the stripes on it	it has those stripes
1174	I would think adidas	The colors and strupes
1244	Adidas	The stripes
1320	Adidas	They typically make sportswear that looks similar to that jacket.

1344	Adidas	The stripes
1479	Adidas	It has a similar logo on the left arm.
1542	Addidas	The three stripes on the sleeves
1683	Adidas	3 stripes
1923	Adidas	The type of design
1987	Adidas, as the stripes indicate the logo of the company.	The three stripes and how they are in the color white of the blue jacket.
1996	Adidas	The stripes
2064	Adidas	It had 3 stripes
2831	Adidas	The stripe on the sleeve looks like their logo.
2866	I would guess that it is made by Adidas because of the athletic look and the 3 stripe design on the left sleeve	I think my answer is specific, but it looks like a sporty/athletic type jacket. The colors pattern and 3 stripe design in sleeve are typical to adidas prodct
2915	adidas	style
2944	Addidas	The solid white stripes remind me of adidas
2948	Adidas	The way it looks
3064	adidas	the style is similar to what I'd expect from them
3115	Addidas	Stripe white and red and blue
3155	Adidas	No comment
3177	Adidas	Because of the stripes on the jacket
3437	Addidas	Stripes
3551	Adidas maybe	The stripes in the arm
3614	Addidas	The style , color and fit
3884	Adidas	Stripes on the arm of the jacket
3999	Adidas	It looks like that style.
4051	Adidas because there are stripes and they tend to have stripes on their clothing.	there are striped on the back neck of the jacket and there are stripes on the sleeves of the jacket.
4083	Adidas	Three stripes
4213	Addidas	The stripes on the sleeve
4268	Adidas	Three white stripes
4457	Adida	Because I seen three lines on the side of the jacket
4658	Addidas	It has the stripes

4719	Adidas	There were the 3 stripes logo on the arm band
4775	Adidas	The 3 stripes on the arm
4926	Adidas	Stripes on arm
5192	Adidas	The sign...the three bars.
5209	Addidas	The symbol on the side.
5217	Adidas/NBA	Stripes on arm and NBA LOGO back of neck
5276	adidas	stripes on the sleeves
5329	Adidas	It gives off a similar style to the clothes of theirs that I already own
5479	addias	tag on back and the stripes
5502	Adidas	Three stripes on arm
5686	Adidas	It's unique white types
5734	Adidas	Stripes on sleeve
6139	Adidas the stripes	The stripes on the the jacket
6147	Maybe from Adidas	Just a guess
6209	Adidas	the stripes on the sleeve
6269	Adidas	The stripes on the sleeves look familar
7547	Addis	The sleeve strips

These 62 initial mentions of adidas in Test Group 6, result in a 41.3% initial confusion rate.

Affiliated With, or Sponsored or Approved by

38.7% (58 out of 150) of Test Group 6 respondents thought the jacket is affiliated with, or sponsored or approved by, another company or brand.

Thirteen additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 13 respondents along with their reasons for naming adidas:

Test Group 6 – Affiliated With, or Sponsored or Approved by Adidas
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Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
1196	Adidas	White stripes
1780	Addidas	Just the way it was designed.
2015	Adidas	The white stripes in the arm.
4276	Adidas's	The design and white striping
4396	Addias	Strips
4799	Addidas	I don't know just think it
4945	Adidas	White stripes
4990	adidas	the overall design of the jacket.
5334	Adidas	Line patterns
6232	Adidas	The way the sleeves look like
6926	Addidas	I noticed some stripes. Taking a guess.
6982	Adidas	The stripes on the sleeves are the Adidas logo
7004	Adidas	Looks like their branding and style

Adding these 13 respondents to the previous 62 respondents that named adidas, brings the gross confusion rate in Test Group 6 to 50.0% (75 out of 150).

XVII) Noise Rate – Control Group 6

Company or Brand that Makes or Puts Out the Jacket

10.7% of Control Group 6 respondents (16 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the jacket.

The following table displays the verbatim answers provided by these 16 respondents along with their reasons for naming adidas:

Control Group 6 – Adidas Makes or Puts Out the Jacket		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
403	Adidas	Looks similar to other styles

1998	Adidas probably makes that exact jacket, but anyone could. It's boring and unoriginal	It's generic and on brand for them
2053	Adidas	Looks like something they would design
3060	Adidas	The style
3098	Adidas	The logos and style
3365	Adidas or under armour	It just looks like their designs
4476	Adidas	The style looks like Adidas jackets that I have seen before.
4641	Addidas?	The symbol on the back of the jacket
4651	Adidas	Looks like one of theirs
4777	Adidas	The black and white coloring and the white trim down the back. It's a very athletic looking jacket.
4961	Adidas	The quality and it looks sporty
5183	Addidas	Black and white colors
5205	Adidas	Looking like adidas
5441	Adidas make similar jackets to that Nike do I like to fit the way it looks	The design and the way it looks makes me feel it's Adidas brand jacket
5949	Adidas seems like a reasonable assumption	The three stripes on the sleeves.
6151	Adidas	The color and the style of the jacket just reminds me of adidas

These 16 respondents constitute an initial 10.7% noise rate in Control Group 6.

Affiliated With, or Sponsored or Approved by

40.7% (61 out of 150) of Control Group 6 respondents thought the jacket is affiliated with, or sponsored or approved by, another company or brand.

Fourteen additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 14 respondents along with their reasons for naming adidas:

Control Group 6 – Affiliated With, or Sponsored or Approved by Adidas		
Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
1150	Adidas	The material
1622	Adidas	Style . Color
1841	Adidas	Similar material
2242	Adidas	Adidas jackets would also have white stripes on their clothing
3100	Adidas	Guessing
3132	Adidas	It can be a new design for adidas
3257	Adidas	Looks like what they would push out...
3293	Addidas	Style
4357	Adidas	Good
4404	Adidas	The colors and stripes
4638	Adidas's	Not this one either
6128	adidas	outgoing
6305	Addidas	It looks like something they sell
6974	addidas	style

Adding these 14 respondents to the previous 16 respondents that named adidas, brings the total noise rate in Control Group 6 to 20.0% (30 out of 150).

XVIII) Group 6 Net Confusion Result

Deducting the 20.0% noise rate in Control Group 6 from the gross confusion rate of 50.0% in corresponding Test Group 6 results in a final net post-sale confusion rate of 30.0% for the Thom Browne men's compression/sweat jacket with respect to adidas:³⁷

³⁷ An additional 4 respondents in Test Group 6 mentioned adidas when initially asked what company or brand they believe makes or puts out the clothing they were shown; however, these respondents expressed significant uncertainty, doubt, or indicated they

Group 6 Net Confusion Rate	
Test Group 6 Gross Confusion Rate	50.0%
Control Group 6 Noise Rate	20.0%
Net Group 6 Confusion Rate	30.0%

XIX) Gross Confusion Rate –Test Group 7 Result

Company or Brand that Makes or Puts Out the Sweatpants

20.0% of Test Group 7 respondents (30 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the sweatpants.

The following table displays the verbatim answers provided by these 30 respondents along with their reasons for naming adidas:

were guessing. One additional respondent in Test Group 6 named adidas in addition to another company or brand when initially asked what company or brand they believe makes or puts out the clothing they were shown. If I were to include these 5 respondents in my overall count of adidas mentions, the net confusion rate in Group 6 would increase by a margin of 3.3%.

Test Group 7 – Adidas Makes or Puts Out the Sweatpants		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
354	Adidas	They are grey
369	Adidas	The design on the sweatpants looks like the addidas logo
471	Adidas	I have seen those pants on store
806	Adidas	The logo
1026	I think these sweatpants are from Adidas	Because the way they are styled the way they look in the three stripes on them
1349	Adidas	The three lines
1462	Adidas	Felt like it was their style
1653	adidas	the 3 stripes
1680	Adidas	Because it has the classic 3 stripes on the pants
1785	Adidas	Familiar logo and design
1930	Adidas	Stripes on the leg
2409	Adidas	Just a guess
2879	Adidas	The stripes
2943	Adidas	Because of the 3 stripes
3022	Addis	The strips on the leg
3069	Adidas	The three stripes on the side looks familiar. Also, the colors are a light grey and that makes me think of the simplicity of the design that Adidas usually does
3120	Adidas	The white lines on the sweatpants remind me of the brand.
3145	Good adidaf	Liens and marking
3146	Adidas	The stripes on the leg
3300	Adidas	I think the little logo on he sweatpants is from Adidas
3507	Adidas	The stripes but I could be wrong
3570	Adidas	The stripes and overall style
4031	Adidas	The lines
4096	Adidas	The stripe pattern
4182	Adidas	The 3 stripes on the leg
4713	Adidas	The three stripes on the leg
5067	Adidas	The stripes
5295	Adidas	Color combinations and pattern match that of Adidas

5318	Adidas	The three stripes on the man's left leg
5823	Adidas nikes	The 3 strips are a signature of Adidas

These 30 initial mentions of adidas in Test Group 7, result in a 20.0% initial confusion rate.

Affiliated With, or Sponsored or Approved by

27.3% (41 out of 150) of Test Group 7 respondents thought the sweatpants are affiliated with, or sponsored or approved by, another company or brand.

Seven additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 7 respondents along with their reasons for naming adidas:

Test Group 7 – Affiliated With, or Sponsored or Approved by Adidas Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
190	Adidas	The stripes
1317	Adidas	No
3531	adidas	it also reminds me of the logo
3761	addidas	I see stripes
3949	Adidas	The stripes on the side.
4517	Adidas	The three stripes
5512	Adidas	The 3 stripes on the left leg.

Adding these 7 respondents to the previous 30 respondents that named adidas, brings the gross confusion rate in Test Group 7 to 24.7% (37 out of 150).

XX) Noise Rate – Control Group 7

Company or Brand that Makes or Puts Out the Sweatpants

4.7% of Control Group 7 respondents (7 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the sweatpants.

The following table displays the verbatim answers provided by these 7 respondents along with their reasons for naming adidas:

Control Group 7 – Adidas Makes or Puts Out the Sweatpants		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
1256	Adidas	The tag
2423	Adidas's	They look like adidas
3110	Adidas	The logo
3304	addis	it looks like there logo on it
3854	Adidas, it seems like it fits fits the trademark style that adidas would make, or perhaps Champion	The look of the fabric and the white strip on the 1 leg
5405	Adidas	The stripe in the leg.
5718	Adidas	They look about the same

These 7 respondents constitute an initial 4.7% noise rate in Control Group 7.

Affiliated With, or Sponsored or Approved by

32.0% (48 out of 150) of Control Group 7 respondents thought the sweatpants are affiliated with, or sponsored or approved by, another company or brand.

Seven additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 7 respondents along with their reasons for naming adidas:

Control Group 7 – Affiliated With, or Sponsored or Approved by Adidas		
Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
214	Adidas	Has a stripe like Adidas
633	Adidas	White strip on the leg
1553	adidas	adidas makes sweatpants
3397	Adidas	I've seen similar styles with their brand
3893	Adidas	Athletic and has a stripe
4756	Adidas	The colors on the tag
5303	Addidas	Looks similar to other things they make

Adding these 7 respondents to the previous 7 respondents that named adidas, brings the total noise rate in Control Group 7 to 9.3% (14 out of 150).

XXI) Group 7 Net Confusion Result

Deducting the 9.3% noise rate in Control Group 7 from the gross confusion rate of 24.7% in corresponding Test Group 4 results in a final net post-sale confusion rate of 15.3% for the Thom Browne men's sweatpants with respect to adidas:³⁸

Group 7 Net Confusion Rate	
Test Group 7 Gross Confusion Rate	24.7%

³⁸ An additional 2 respondents in Test Group 7 mentioned adidas when initially asked what company or brand they believe makes or puts out the clothing they were shown; however, these respondents expressed significant uncertainty, doubt, or indicated they were guessing. An additional 2 respondents in Test Group 7 named adidas in addition to another company or brand when initially asked what company or brand they believe makes or puts out the clothing they were shown. If I were to include these 4 respondents in my total count of adidas mentions, the overall net confusion rate in Group 7 would increase by a margin of 2.7%.

Control Group 7 Noise Rate	9.3%
Net Group 7 Confusion Rate	15.4%

XXII) Gross Confusion Rate –Test Group 8 Result

Company or Brand that Makes or Puts Out the Footwear

20.7% of Test Group 8 respondents (31 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the footwear.

The following table displays the verbatim answers provided by these 31 respondents along with their reasons for naming adidas:

Test Group 8 – Adidas Makes or Puts Out the Footwear		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
23	Adidas	I saw the 3 stripes
29	Addidas	The stripes
56	adidas	The design
131	adidas	looks like a shoe they might make
367	Addidas	The general look of the shoe.
549	Adidas	Because of the stripes and shape of the shoe.
593	Adidas	Stripe pattern
606	adidas	The logo
1215	Adidas	the stripes
1429	Adias	It feels like a type of running shoe by them
1527	Adidas	the 2 vertical stripes
1672	Adidas	Stripes
2255	Adidas	The style of the shoe. The lines that draw down the side of the shoe.
2280	Adidas Because there logo has 3 stripes and the footwear you just	They look like a adidas classic shoe looking by the color

	showed me had 3 stripes	
2923	My opinion is that it could be Adidas.	The footwear featured three parallel diagonal stripes (though Adidas's usually are all one color and not mixed). This could be a special edition in U.S. colors.
3033	Adidas	Style
3087	Adidas	the colors and the design
3369	Adidas	It looks like that brand
3538	adidas	the design
3756	Adidas?	I believe I saw shoes like that that a friend of mine was wearing awhile ago. I gave my best guess!?
3903	Adidas	The stripes on the side of the shoe
4066	Looks like adidas	The colors, the shape of the shoe and the bottom of the shoe definitely.
4068	Adidas	The style
4300	Adidias	The 2 stripes on the shoe
4331	Addidas	The two stripes
4407	Adidas	Side strips
4510	Adidas	The three stripes on the side
4979	Adidas	The colors and stripes
5221	adidas	looks similar to adidas shoes i've seen
5242	Adidas	The striping and color
5287	adidas	the stripes and direction of the stripes

These 31 initial mentions of adidas in Test Group 8, result in a 20.7% initial confusion rate.

Affiliated With, or Sponsored or Approved by

30.0% (45 out of 150) of Test Group 8 respondents thought the footwear is affiliated with, or sponsored or approved by, another company or brand.

Six additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 6

respondents along with their reasons for naming adidas:

Test Group 8 – Affiliated With, or Sponsored or Approved by Adidas		
Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
231	Adidas	Old school look
970	Addis	The shoe shape
3773	Adidas	The stripes
4380	Adidas	It seems to be similar to some of the shoes I've seen adidas sell
4406	Adidas	I have a friend with a similar pair.
4427	Adidas	They look like they belong

Adding these 6 respondents to the previous 31 respondents that named adidas, brings the gross confusion rate in Test Group 8 to 24.7% (37 out of 150).

XXIII) Noise Rate – Control Group 8

Company or Brand that Makes or Puts Out the Footwear

7.3% of Control Group 8 respondents (11 out of 150) identified adidas when initially asked what company or brand they believe makes or puts out the footwear.

The following table displays the verbatim answers provided by these 11 respondents along with their reasons for naming adidas:

Control Group 8 – Adidas Makes or Puts Out the Footwear		
Verbatim Answers		
Resp. ID	Q220 Company/Brand:	Q230 What Makes You Think:
227	addidas	its ugly
479	Adidas	it looks like something they would sell
1942	No brand label was pictured but I'm going to say adidas	The red hues and the distinct lines
2891	Adidas	Looks like their style
3085	adidas	looked like something they would make.
3223	Adidas	It looks sporty and ugly
3461	Adidas	Just the way it looks
4052	Adidas	The look and shape of the shoe.
4133	Addidas	Not sure
4606	Adidas	The shape and style of the shoe reminds me of Adidas.
5147	adais	How the red stripe is.

These 11 respondents constitute an initial 7.3% noise rate in Control Group 8.

Affiliated With, or Sponsored or Approved by

22.7% (34 out of 150) of Control Group 8 respondents thought the footwear is affiliated with, or sponsored or approved by, another company or brand.

Five additional respondents then identified adidas when asked what other company or brand.

The following table displays the verbatim answers provided by these 5 respondents along with their reasons for naming adidas:

Control Group 8 – Affiliated With, or Sponsored or Approved by Adidas Verbatim Answers		
Resp. ID	Q265 Company/Brand:	Q270 Reasons You Think That:
10	Adidas	It is classic
183	Adidas	Looks like it belongs to them
600	Adidas	Not sure just the design of the shoe and how the colors are separated.
3751	Addidas	They look like them
5207	Adidas	It looks similar to Adidas running shoes.

Adding these 5 respondents to the previous 11 respondents that named adidas, brings the total noise rate in Control Group 8 to 10.7% (16 out of 150).

XXIV) Group 8 Net Confusion Result

Deducting the 10.7% noise rate in Control Group 8 from the gross confusion rate of 24.7% in corresponding Test Group 8 results in a final net post-sale confusion rate of 14.0% for the Thom Browne running shoe with respect to adidas:³⁹

Group 8 Net Confusion Rate	
Test Group 8 Gross Confusion Rate	24.7%
Control Group 8 Noise Rate	10.7%
Net Group 8 Confusion Rate	14.0%

XXV) All Groups Combined – Net Confusion Result

I also looked at the confusion rates among all four survey Groups combined.

³⁹ An additional 3 respondents in Test Group 8 named adidas in addition to another company or brand when initially asked what company or brand they believe makes or puts out the clothing they were shown. Similarly, 1 additional respondent in Control Group 8 named adidas in addition to another company or brand in response to the initial open end. If I were to include these 4 respondents in my total count of adidas mentions, the overall net confusion rate in Group 8 would increase by a margin of 1.3%.

Deducting the 10.0% noise rate across all eight Control Groups (120 out of 1200 who named adidas) from the gross confusion rate of 36.9% in the Test Groups (443 out of 1200 who named adidas), results in a final net post-sale confusion rate of 26.9% among all respondents:

All Groups - Net Confusion Rate	
Test Groups Gross Confusion Rate	36.9%
Control Groups Noise Rate	10.0%
Net Confusion Rate	26.9%

XXVI) All Women's Clothing Groups -- Net Confusion Result

I also looked at the confusion rates among the three Groups that saw women's clothing (Groups 1, 2 and 3).

Deducting the 10.4% noise rate (47 out of 450 who named adidas) across all three Control Groups that saw women's clothing from the gross confusion rate of 40.2% (181 out of 450 who named adidas) in the corresponding Test Groups, results in a final net post-sale confusion rate of 29.8% among all respondents in the women's clothing groups:

All Women's Clothing Groups - Net Confusion Rate	
Women's Test Groups Gross Confusion Rate	40.2%
Women's Control Groups Noise Rate	10.4%
Net Confusion Rate among Women's Groups	29.8%

XXVII) All Men's Clothing Groups -- Net Confusion Result

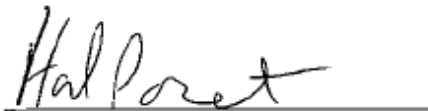
I also looked at the confusion rates among the four Groups that saw men's clothing items (Groups 4, 5, 6, 7).

Deducting the 9.5% noise rate (57 out of 600 who named adidas) of these three Groups from the gross confusion rate of 37.5% (225 out of 600 who named adidas) in the corresponding Test Groups, results in a final net post-sale confusion rate of 28.0% among all respondents in the men's clothing groups:

All Men's Clothing Groups - Net Confusion Rate	
Men's Test Groups Gross Confusion Rate	37.5%
Men's Control Groups Noise Rate	9.5%
Net Confusion Rate among Men's Groups	28.0%

XXVIII) Conclusions

Based on the net confusion rates, it is my opinion that the four-stripe designs on the Thom Browne apparel and the red-and-blue two-stripe design on the Thom Browne footwear create a substantial likelihood of post-sale confusion with respect to adidas and its Three-Stripe Mark.



Hal Poret

Dated: August 5, 2022

Hal L. Poret (hal.inc42@gmail.com; 914-772-5087)

Education

- 1998 Harvard Law School, J.D., *cum laude*
- Editor/Writer – Harvard Law Record
 - Research Assistant to Professor Martha Minow
- 1995 S.U.N.Y. Albany, M.A. in Mathematics, *summa cum laude*
- Statistics
 - Taught calculus/precalculus/statistics
- 1993 Union College, B.S. in Mathematics with honors, *magna cum laude*
- Phi Beta Kappa
 - Resch Award for Achievement in Mathematical Research

Employment

- 2016 - President, Hal Poret LLC
- Design, supervise, and analyze consumer surveys, including Trademark, Trade Dress, Advertising Perception, Consumer Deception, Claims Substantiation studies, Damages, and Corporate Market Research Surveys
 - Consulting regarding survey design and review of other surveys
 - Provided expert testimony at deposition and/or trial regarding survey research in over 100 U.S. District Court litigations and proceedings in front of TTAB, NAD, FTC and FCC.
- 2004 - 2015 Senior Vice President, ORC International
- Designed, supervised, and analyzed consumer surveys in legal and corporate market research areas, and provided expert testimony regarding survey research in legal cases.
- 2003 - 2004 Internet Sports Advantage
- Developed and marketed proprietary internet sports product, and licensed trademark and intellectual property rights.
- 1998 - 2003 Attorney, Foley Hoag & Eliot, Boston, MA
- Represented corporations and individuals in trademark, trade dress, advertising, product, and related legal disputes.
 - Worked with survey experts in developing and using surveys as evidence in trademark, trade dress and advertising disputes.

Testimony at Trial or by Deposition Past 4 Years

(Party who retained me shown in bold)

2022	The Cookie Department v. Hershey (Deposition)	USDC Northern District of CA
2022	Scotts Company v. Pennington Seed (Deposition)	USDC Southern District of OH
2022	Rise Brewing Co. v. PepsiCo. (Deposition)	USDC Southern District of NY
2022	Chartwell Studio Inc. v. Team Impressions Inc. (Deposition)	USDC Northern District of IL
2022	Diageo v. Deutsch (Deposition and trial)	USDC Southern District of NY
2022	Stone Brewing v. MillerCoors (Deposition and trial)	USDC Southern District of CA
2022	Gibson v. Armadillo (Deposition and trial)	USDC Eastern District of TX
2022	adidas v. Fashion Nova (Deposition)	USDC District of OR
2022	Fishon v. Premier Nutrition Corp. (Deposition and trial)	USDC Northern District of CA
2022	Zuru LLC v. Lego Juris (Deposition)	USPTO Cancellation
2022	American Eagle Outfitters, Inc. v. Walmart (Deposition)	USDC Western District of PA
2022	Hansen v. Newegg.com Americas, Inc. (Deposition)	Superior Court California
2021	Coachella v. Coachillin Holdings (Deposition)	USPTO Opposition

2021	S&P Global, Inc. v. S&P Data LLC (Deposition and trial)	USDC Delaware
2021	Wing Enterprises v. Tricam Industries, Inc. (Deposition and trial)	USDC District of MN
2021	Advance Magazine Publishers v. Goncharova (Trial testimony)	USPTO Opposition
2021	Wildfang v. Target Corporation (Deposition)	USDC District of OR
2021	Orgain v. Iovate (Deposition)	USDC Central District of CA
2021	Edwards Life Sciences v. Meril Life Sciences (Deposition)	USDC Northern District of CA
2021	Publix. v. Pharmapacks (Deposition)	USPTO Opposition
2021	Tory Burch LLC v. Olem Shoe Corp. (Deposition)	USDC Southern District of NY
2021	Heaven Hill v. Log Still Distilling (Deposition)	USDC Western District of KY
2021	Kamado Joe v. Dansons US LLC (Deposition)	USDC Northern District of GA
2021	Kiva Health Brands, LLC v. Kiva Brands Inc. (Deposition)	USDC Northern District of CA
2021	Elevations Credit Union v. Elevate Credit Union (Deposition)	USDC District of UT
2021	Sharpe v. GT'S Living Foods (Deposition)	USDC Central District of CA
2021	Mirzoyan v. Hershey (Deposition)	Superior Court of California
2021	Furniture Dealer.net v. Amazon.com	

	(Deposition)	USDC District of MN
2021	Treehouse Foods, Inc. v. Keurig Green Mountain, Inc. (Deposition)	USDC Southern District of NY
2021	Brady v. Bayer (Deposition)	Superior Court of California
2021	Capri Sun v. American Beverage Corporation (Deposition)	USDC Southern District of NY
2020	Universal Electronics, Inc. v. Roku Inc. et al. (Deposition)	International Trade Commission
2020	Enchante Accessories v. Turko Textiles (Deposition)	USDC Southern District of NY
2020	Greater Orlando Aviation Authority v. Melbourne Airport Authority (Deposition)	USDC Middle District of FL
2020	New Orleans Saints v. WDI (Trial)	American Arbitration Association
2020	Vanderbilt University v. Scholastic (Deposition)	USDC Middle District of TN
2020	Pacific Packaging v. Nutrisystem (Deposition)	USDC Central District of CA
2020	American Airlines v. Delta Airlines (Deposition)	USDC Northern District of TX
2020	FCA v. Mahindra (ITC Modification trial testimony)	ITC Modification Proceeding
2020	Lontex Corporation v. Nike (Deposition and trial)	USDC Eastern District of PA
2020	Koenig v. Vizio, Inc. (Deposition)	Superior Court California (LA County)
2020	Roley v. Google (Deposition)	USDC Northern District of CA

2020	Snaplock Industries v. Swisstrax Corp. (Deposition)	USDC District of Nevada
2020	TeamSnap v. Team Mates Pty. Ltd , (Deposition)	USDC District of CO
2020	Bluetooth SIG V. FCA, USA (Deposition)	USDC Western District of Washington
2020	Monster Energy v. VPX (Deposition)	USDC Southern District of FL
2019	George Sink PA Injury Law Firm v. George T. Sink, Jr. (Arbitration trial)	American Arbitration Association
2019	Cabrera v. Bayer Corporation (Deposition)	USDC Central District of CA
2019	GDM Enterprises v. Astral Health & Beauty (Deposition)	USDC Western District of MO
2019	Yahoo v. Mozilla (Deposition)	Superior Court Santa Clara County, CA
2019	Scott Fetzer v. John Henry, III (Deposition)	Court of Common Pleas, Cuyahoga County, OH
2019	Illinois Tool Works v. Poly-America (Deposition and trial)	USDC Northern District of TX
2019	Adidas v. Forever 21 (Deposition)	USDC District of Oregon
2019	TRP v. Simalasan (Deposition)	USDC District of NV
2019	Ironhawk Technologies v. Dropbox Inc. (Deposition)	USDC Central District of CA
2019	Universal Standard v. Target Corporation (Deposition)	USDC Southern District of NY

2019	FCA v. Mahindra (Deposition and ITC trial)	ITC and USDC Eastern District of MI
2019	DealDash v. ContextLogic (Deposition)	USDC Northern District of CA
2019	Sprint v. AT&T Mobility (Deposition and trial)	USDC Southern District of NY
2019	Merck & Co v. Merck KGaA (Deposition)	USDC District of NJ
2019	Arbor Pharmaceuticals v. ANI Pharmaceuticals (Deposition)	USDC District of Minnesota
2019	American Cruise Lines v. American Queen Steamboat Company (Deposition and trial)	USDC District of DE
2018	MZ Wallace v. Oliver Thomas (Deposition and trial)	USDC Southern District of NY
2018	VonRosenberg v. Lawrence (Deposition)	USDC District of SC
2018	Kjaer Weis v. Kimsaprincess, Inc. (Deposition)	USDC Central District of CA
2018	In re: NCAA Grant-in-Aid Cap Litigation (Deposition; Trial)	USDC Northern District of CA
2018	Under Armour v. Battle (Deposition)	USDC District of Maryland
2018	Federal Trade Commission v. D-Link Systems (Deposition)	USDC Northern District of CA
2018	Ezaki Glico v. Lotte International (Deposition)	USDC District of NJ
2018	Car Freshener Corporation v. American Covers/Energizer Holdings (Deposition)	USDC Northern District of NY
2018	Combe v. Dr. August Wolff	

	(Deposition and trial)	USDC Eastern District of VA
2018	In Re GM Ignition Switch Litigation (Deposition)	USDC Southern District of NY
2018	Zetor v. Ridgeway (Trial Testimony Deposition)	USDC Western District of AR
2018	Superior Consulting v. Shaklee (Deposition; Hearing; Trial)	USDC Middle District of FL
2018	Monster Energy Company v. Integrated Supply Network (Deposition)	USDC Central District of CA
2018	Sandoz v. GlaxoSmithkline (Deposition)	USPTO Opposition
2018	Variety Stores v. Walmart Stores, Inc. (Trial)	USDC Eastern District of NC
2018	JB-Weld v. Gorilla Glue Company (Deposition)	USDC Northern District of GA
2018	Bratton v. The Hershey Company (Deposition)	USDC Western District of MO
2018	Leadership Studies v. Blanchard Training & Development (Deposition)	USDC Southern District of CA

Presentations

The McCarthy Series: U.S.P.T.O. v. Booking.com: What the Recent SCOTUS Ruling Means for Trademark Law
(McCarthy Institute Webinar, July 29, 2020)

Surveys in the Brave New World: Designing and Using Survey Evidence in the Age of Online Shopping, Influencers and Hashtags
(INTA Annual Meeting, May 21, 2019)

Consumer Perception Surveys - A Primer from Survey Experts and NAD
(ASRC Conference, Dec 7, 2018)

What's New in Advertising Law, Claim Support and Self-Regulation?
(ABA Seminar, November 17, 2015)

How Reliable is Your Online Survey
(2015 ASRC Annual Conference, September 29, 2015)

What Do Consumers Think? Using Online Surveys to Demonstrate Implied Claims
(ANA Advertising Law and Public Policy Conference, April 1, 2015)

Cutting Edge Developments in Trademark Surveys (Rocky Mountain Intellectual Property & Technology Institute, May 30, 2013)

Using Survey Experts in Trademark Litigation (DRI Intellectual Property Seminar, May 9, 2013)

Surveys in Trademark and Advertising Litigation (2013 National CLE Conference, Snowmass Colorado, January 2013)

Internet Survey Issues (PLI Hot Topics in Advertising Law Conference, March 2012)

Measuring Consumer Confusion Through Online Surveys (2011 Midwest IP Institute) (September, 2011)

Online Surveys as Evidence in Trademark Disputes (International Trademark Association Annual Conference, May 2011)

Managing Intellectual Property Trademark Roundtable (April 7, 2010)

Recent Trends in Trademark Surveys (Virginia State Bar Intellectual Property Conference, October 2009)

Trademark Surveys in US Litigation (presentation for International Trademark Association Annual Conference) (May 2009)

How to Conduct Surveys for use in Trademark Disputes (Practicing Law Institute Advanced Trademark Law Conference) (May 2009)

Trademark and Advertising Perception Studies for Legal Disputes (Opinion Research Corporation Seminar, June 2008)

Understanding Advertising Perception Surveys (Promotions Marketing Association Annual Law Conference) (November 2007)

Designing and Implementing Studies to Substantiate Advertising Claims (American Conference Institute Claims Substantiation Conference, October 2007)

Surveys in Trademark and False Advertising Disputes (InfoUSA Webinar, June 2007)

Measuring Consumer Perception in False Advertising and Trademark Cases, (multiple presentations) (2007)

Potential Errors to Avoid In Designing a Trademark Dilution Survey (American Intellectual Property Association paper, April 2007)

Consumer Surveys in Trademark and Advertising Cases (presentation at Promotions Marketing Association Annual Law Conference) (December 2006)

Use of Survey Research and Expert Testimony in Trademark Litigation, (International Trademark Association Annual Conference, May 2006)

Survey Research as Evidence in Trademark/Trade Dress Disputes (multiple presentations) (2006)

Using Surveys to Measure Secondary Meaning of Trade Dress, Legal Education Seminar, Boston, April 2006

Publications/Papers

Commentary: Response to the Commentary Entitled “The Science of Proving Trademark Dilution”, 111 TMR 778 (July-August 2021)

An Empirical Assessment of the Eveready Survey’s Ability to Detect Significant Confusion in Cases of Senior Marks that are Not Top-Of-Mind, 109 TMR 935 (Nov-Dec 2019)

Cutting Edge Developments in Trademark Surveys (Rocky Mountain Intellectual Property & Technology Institute, May 2013)

Hot Topics and Recent Developments in Trademark Surveys (paper for May 2013 DRI Intellectual Property Conference)

Surveys in Trademark and Advertising Litigation (2013 National CLE Conference, Snowmass Colorado, January 2013)

Trademark Litigation Online Consumer Surveys (Practical Law Company Intellectual Property and Technology, May 2012)

Hot Topics in Advertising Law 2012 (Contributor to Practising Law Institute publication)

A Comparative Empirical Analysis of Online Versus Mail and Phone Methodologies for Trademark Surveys, 100 TMR 756 (May-June 2010)

Recent Trends in Trademark Surveys (paper for Virginia State Bar Intellectual Property conference, October 2009)

Trademark Dilution Revision Act breathes new life into dilution surveys (In Brief PLI website, June 2009)

The Mark (Survey Newsletter; three editions 2009)

Hot Topics in Trademark Surveys (paper for Practising Law Institute Advanced Trademark Law Conference) (May 2009)

The Mark (Survey Newsletter, 2008)

Trademark and Advertising Survey Report (Summer 2007)

Avoiding Pitfalls in Dilution Surveys under TDRA (AIPLA Spring Conference, Boston, May 2007)

Commentary

Comment on Hotels.com case (on TTABLOG.COM, July 24, 2009)

Comment on Nextel v. Motorola (on TTABLOG.COM, June 19, 2009)

PLI All-Star Briefing Newsletter, "What does the Trademark Dilution Revision Act mean for the future of Dilution Surveys?" (June 2009)

Professional Memberships/Affiliations

American Association of Public Opinion Research

International Trademark Association

National Advertising Division of Council of Better Business Bureaus

<p>SCREENER</p>

BASE: ALL RESPONDENTS

Q99 Insert Captcha [HIDE “YOU ARE HUMAN” SCREEN]

BASE: ALL RESPONDENTS

Q100 Please enter your year of birth. [PROGRAMMER: FORCE 4-DIGIT TEXT BOX. IF DOES NOT ENTER 4 DIGITS THEN SHOW ERROR MESSAGE INSTRUCTING RESPONDENT TO USE A 4-DIGIT FORMAT. AFTER RESPONDENT ENTERS 4 DIGITS AND HITS CONTINUE, IF THEIR YEAR DOES NOT MATCH PANELIST’S PRELOAD THEN DISPLAY AN ERROR MESSAGE THAT READS, “Please confirm you have entered your year of birth accurately.” IF RESPONDENT’S YEAR STILL DOES NOT MATCH PANEL DEMO THEN TERMINATE.]

ASK IF: HAS NOT TERMINATED

Q105 Are you...

1. Male [TERMINATE IF IT DOES NOT MATCH PANEL DEMO]
2. Female [TERMINATE IF IT DOES NOT MATCH PANEL DEMO]
3. Other [DO NOT TERMINATE]

ASK IF: HAS NOT TERMINATED

Q107 Which of these age ranges includes your age?
[TERMINATE IF UNDER 16 OR AGE RANGE NOT POSSIBLE BASED ON YEAR OF BIRTH ENTERED IN Q100. NOTE - Each respondent can have two possible ages depending on if respondent’s birthday has passed.]

Please select one response.

1. Under 16 [TERMINATE]
2. 16 to 24
3. 25 to 34
4. 35 to 44
5. 45 to 54
6. 55 or older

Appendix B: Questionnaire

BASE: ANY NON-TERMINATES

Q109 Which of the following social media services, if any, have you used in the past month?

Please select all that apply.

[RANDOMIZE]

1. Snapchat
2. YouTube
3. TikTok
4. Instagram
5. Facebook
6. LinkedIn
7. Twitter
8. Dusan [TERMINATE]
9. None of these [ANCHOR; EXCLUSIVE]

[Terminate if selects 109/8]

ASK IF: HAS NOT TERMINATED

Q110 In what state do you live?

[PROGRAMMER: Drop down menu of states plus D.C. Include an option for "Other" and terminate if it is selected. Code into Northeast, South, Southeast, Midwest & West.]

ASK IF: HAS NOT TERMINATED

Q120 In the past 12 months, which of the following, if any, have you personally purchased, either for yourself or for someone else?

(Select all that apply)

[GROUP 1-2, GROUP 3-4, AND GROUP 5-6. RANDOMIZE WITHIN GROUPS & RANDOMIZE GROUPS]

1. Women's clothing or footwear
2. Men's clothing or footwear
3. Mobile phone or tablet
4. Mobile phone or tablet case
5. Shower curtain or mat
6. Chutil cover or box [TERMINATE]
7. None of these [ANCHOR; EXCLUSIVE]

Appendix B: Questionnaire

ASK IF: HAS NOT TERMINATED

Q130 In the next 12 months, which of the following, if any, are you likely to personally purchase, either for yourself or for someone else?

(Select all that apply)

[REPEAT RESPONSE OPTION LIST IN SAME ORDER AS IN Q120]

[MUST SELECT AT LEAST ONE OF: Q120=1, Q120=2, Q130=1, OR Q130=2, TO CONTINUE; OTHERWISE, TERMINATE.]

[TERM IF 120=6 OR 130=6 SELECTED REGARDLES OF WHAT ELSE IS SELECTED]

ASK IF: 120=1

Q140 In the past 12 months, which of the following items of women's clothing or footwear, if any, have you personally purchased, either for yourself or for someone else?

(Select all that apply)

[RANDOMIZE]

1. Hoodie sweatshirt
2. Compression tights/sweatpants
3. Compression tee shirt
4. Running shorts
5. Running shoes
6. Collar shirt
7. Dress
8. Turtleneck sweater
9. Wool trousers
10. Sandals
11. None of these [ANCHOR; EXCLUSIVE]

Appendix B: Questionnaire

ASK IF: 130=1

Q145 In the next 12 months, which of the following items of women's clothing or footwear, if any, are you likely to personally purchase, either for yourself or for someone else?
(Select all that apply)

[SHOW SAME RESPONSE OPTIONS AS IN Q140 IN SAME ORDER]

ASK IF: 120=2

Q150 In the past 12 months, which of the following items of men's clothing or footwear, if any, have you personally purchased, either for yourself or for someone else?

(Select all that apply)

[RANDOMIZE]

1. Compression/sweat jacket
2. Sweatpants
3. Tee shirt
4. Shorts
5. Running shoes
6. Collar shirt
7. Sport coat
8. Turtleneck sweater
9. Wool trousers
10. Sandals
11. None of these [ANCHOR; EXCLUSIVE]

ASK IF: 130=2

Q155 In the next 12 months, which of the following items of men's clothing, if any, are you likely to personally purchase, either for yourself or for someone else?
(Select all that apply)

[SHOW SAME RESPONSE OPTIONS AS IN Q150 IN SAME ORDER]

[MUST SELECT AT LEAST ONE OF ITEMS 1-5 IN AT LEAST ONE OF THESE Q'S 140/145/150/155; OTHERWISE, TERMINATE.]

Appendix B: Questionnaire

QUALIFIES FOR:

CELLS 1 & 9 IF SELECTS AT LEAST ONE OF: selects 140=1, 140=2, 145=1, or 145=2 (women's hoodie & compression tights)

CELLS 2 & 10 IF SELECTS AT LEAST ONE OF: selects 140=1 or 145=1 (women's hoodie)

CELLS 3 & 11 IF SELECTS AT LEAST ONE OF: selects 140=3, 140=4, 145=3, or 145=4 (women's compression T & running shorts)

CELLS 4 & 12 IF SELECTS AT LEAST ONE OF: selects 150=2, 150=3, 155=2, or 155=3 (men's sweatpants & T)

CELLS 5 & 13 IF SELECTS AT LEAST ONE OF: selects 150=4 or 155=4 (men's shorts)

CELLS 6 & 14 IF SELECTS AT LEAST ONE OF: selects 150=1 or 155=1 (men's jacket)

CELL 7 & 15 IF SELECTS AT LEAST ONE OF: selects 150=2 or 155=2 (men's sweatpants)

CELLS 8 & 16 IF SELECTS AT LEAST ONE OF: selects 140=5, 145=5, 150=5 or 155=5 (running shoes)

[IF QUALIFIES FOR ONE OF THE ABOVE CELLS, BUT RESPONDENTS' AGE/GENDER QUOTA IS FULL FOR THAT CELL, THEN RANDOMIZE TO ANY OTHER CELL WITH OPEN AGE/GENDER QUOTA FOR THAT RESPONDENT.]

[IF DOES NOT QUALIFY FOR ANY OF CELLS 1-16 THEN TERMINATE.]

ASK IF: HAS NOT TERMINATED

Q170 For quality assurance, please type the word "survey" in the blank next to the "Other" box below and then click to continue.

1. Strongly agree
2. Agree
3. Neutral
4. Disagree
5. Strongly disagree
6. Other _____ [DO NOT FORCE TEXT BOX]

[TERMINATE IF SELECTED 170/1-5 OR DOES NOT TYPE IN AN ANSWER.]

Appendix B: Questionnaire

ASK IF: HAS NOT TERMINATED

Q180 You have qualified to take this survey. Before continuing, please carefully read these instructions:

- * Please take the survey in one session without interruption.
- * Please keep your browser maximized for the entire survey.
- * While taking the survey, please do not consult any other websites or other electronic or written materials.
- * Please answer all questions on your own without consulting any other person.
- * If you normally wear eye glasses or contact lenses when viewing a computer screen, please wear them for the survey.

1. I understand and agree to the above instructions
2. I do not understand or do not agree to the above instructions **[TERMINATE]**

MAIN SURVEY

[PROGRAMMING NOTE: DISPLAY ANY TEXT WITH ITS OWN QUESTION NUMBER ON A SCREEN BY ITSELF.]

ASK: CELLS 2, 5, 6, 7, 10, 13, 14, 15 ONLY

[In blanks below, insert & underline:

"hoodie sweatshirt" for Cell 2 & 10

"pair of shorts" for Cell 5 & 13

"jacket" for Cell 6 & 14

"pair of sweatpants" for Cell 7 & 15]

Q200 On the next screen you will see images of clothing, including a _____.

Please take as much time as you need to view the _____, so we can ask you some questions specifically about the _____.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

ASK: CELLS 1, 3, 4, 9, 11, 12 ONLY

Q202 On the next screen you will see images of clothing.

Please take as much time as you need to view the clothing so we can ask you some questions about it.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

ASK: CELLS 8 & 16 ONLY

Q205 On the next screen you will see an image of footwear.

Please take as much time as you need to view the footwear so we can ask you some questions about it.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

Appendix B: Questionnaire

ASK: ALL QUALIFIED RESPONDENTS

[In blanks for Q210, insert:

"clothing" for Cells 1, 3, 4, 9, 11, 12

"hoodie sweatshirt" for Cells 2, 10

"shorts" for Cells 5, 13

"jacket" for Cells 6, 14

"sweatpants" for Cells 7, 15

"footwear" for Cells 8, 16]

Q210 [IF PC INCLUDE: Please click through each image of the _____ below.

You may click on any image if you would like to see it enlarged.]

[IF MOBILE INCLUDE: Please swipe through each image of the _____

below. You may pinch the image if you would like to zoom in.]

[IF CELLS 8 OR 16 ON DESKTOP INSERT: Please view the image below.

You may click on the image if you would like to see it enlarged.]

[IF CELLS 8 OR 16 ON MOBILE INSERT: Please view the image below.

You may pinch the image if you would like to zoom in.]

**[PROGRAMMER: DISPLAY IMAGES ONE AT A TIME
CORRESPONDING WITH PPT SLIDE FOR EACH CELL.]**

**[IF PC RESPONDENT: IF RESPONDENT CLICKS ON IMAGE, SHOW
ENLARGED VERSION. PROGRAM ARROWS TO THE SIDES OF
THE IMAGES FOR RESPONDENTS TO CLICK BACK AND FORTH.
ONLY SHOW THE FORWARD ARROW UNTIL ALL IMAGES FOR
THE CELL HAVE BEEN SEEN AND THEN ADD A BACK ARROW
FOR RESPONDENTS TO CONTINUE BACK AND FORTH.]**

**[IF MOBILE RESPONDENT: ALLOW TO PINCH TO EXPAND.
ALLOW RESPONDENTS TO SWIPE LEFT AND RIGHT TO SEE
IMAGES. ONLY ALLOW TO SWIPE LEFT UNTIL ALL IMAGES FOR
THE CELL HAVE BEEN SEEN AND THEN ADALLOW
RESPONDENTS TO SWIPE LEFT AND RIGHT]**

**[DISABLE CONTINUE BUTTON UNTIL ALL IMAGES HAVE BEEN
VIEWED AND A TOTAL OF 15 SECONDS HAS PASSED. WHILE
DISABLED, DISPLAY THE FOLLOWING ON SCREEN BENEATH
THE IMAGE: *To ensure you have had enough time to view the image, the
continue button will remain disabled for 15 seconds.*]**

**[AFTER 15 SECONDS, REPLACE THE LINE ABOVE WITH THE
FOLLOWING QUESTION:]**

Before continuing with the survey, please indicate whether or not you
have viewed the _____ clearly.

Appendix B: Questionnaire

1. I viewed the _____ clearly
2. I am unable to view the _____ clearly [TERMINATE; DO NOT COUNT AS COMPLETE]

[PROGRAMMER: For first blank in each of questions 220 - 270 below, insert:]

"clothing" for Cells 1, 3, 4, 9, 11, 12

"hoodie sweatshirt" for Cells 2, 10

"shorts" for Cells 5, 13

"jacket" for Cells 6, 14

"sweatpants" for Cells 7, 15

"footwear" for Cells 8, 16]

ASK: ALL QUALIFIED RESPONDENTS

Q220 What company or brand do you believe makes or puts out the _____ we just showed you, if you have an opinion?

[MEDIUM TEXT BOX FOR ANSWER AND "Don't know/No opinion" OPTION. FORCE TEXT OR BUTTON BUT DO NOT ALLOW BOTH.]

ASK: ENTERED TEXT IN 220

Q230 What makes you think the _____ we showed you is made or put out by [insert & underline answer from 220]?

[LARGE TEXT BOX]

ASK: ALL QUALIFIED RESPONDENTS

Q260 Do you think the _____ we showed you is affiliated with, or sponsored or approved by, any other company or brand?

1. Yes, I do
2. No, I do not
3. Don't know/No opinion

ASK IF: Q260=1

Q265 You answered that you think the _____ we showed you is affiliated with, or sponsored or approved by, another company or brand.

What other company or brand?

If you are thinking of more than one company or brand, please enter each one in a separate box below. Or if you don't know you may select that option.

Appendix B: Questionnaire

[5 SMALL TEXT BOXES AND “Don’t know”. FORCE AT LEAST ONE TEXT BOX OR DK BUT DO NOT ALLOW BOTH.]

ASK IF: Q265=ENTERED TEXT IN AT LEAST ONE BOX

Q270 Each company or brand you mentioned is listed below.

For each one, please tell us your reasons for thinking that the _____ we showed you is affiliated with, or sponsored or approved by, that company or brand.

Please be as specific and detailed as possible.

[LIST EACH COMPANY/BRAND ENTERED IN Q265 AND TO THE RIGHT OF EACH PROVIDE A LARGE TEXT BOX. ABOVE THE LARGE TEXT BOXES DISPLAY, “Reasons:”]

POST-SURVEY CLASSIFICATION

ASK IF: ALL

Q300 Please select the answer “ _____ ” from the following list of choices to continue with the survey.

[RANDOMIZE WHICH OF 1-4 IS INSERTED IN QUESTION ABOVE. RANDOMIZE ORDER OF 1-4 IN LIST BELOW.]

1. North
2. South
3. East
4. West

[RESPONDENT MUST SELECT CHOICE MATCHING TERM INSERTED IN QUESTION. OTHERWISE, DO NOT COUNT AS COMPLETE]

ASK IF: ALL

Q400 Do you or does anyone in your household work for any of the following?

(Select all that apply)

[RANDOMIZE]

1. A company that makes or sells clothing
2. A company that makes or sells footwear

Appendix B: Questionnaire

3. An advertising or market research company
4. No, none of these [ANCHOR; EXCLUSIVE]

ASK: 400=1 AND/OR 400=2

Q500 Do you or does anyone in your household work for any of the following companies?

(Select all that apply)

[Randomize]


1. adidas
2. Nike
3. Under Armour
4. Puma
5. New Balance
6. Columbia
7. Thom Browne
8. Kadri
9. None of these [ANCHOR; EXCLUSIVE]

Appendix C: Screenshots

SCREENER

Q99

☐ I'm not a robot


reCAPTCHA
[Privacy](#) · [Terms](#)

Continue »

Q100

Please enter your year of birth.
Please enter a number

Continue »

Q105

Are you...
Please select one response

- ☐ Male
- ☐ Female
- ☐ Other

Continue »

Q107

Which of these age ranges includes your age?
Please select one response

- ☐ Under 16
- ☐ 16 to 24
- ☐ 25 to 34
- ☐ 35 to 44
- ☐ 45 to 54
- ☐ 55 or older

Continue »

Appendix C: Screenshots

Q109

Which of the following social media services, if any, have you used in the past month?

Please select all that apply

- ☐ LinkedIn
- ☐ Instagram
- ☐ TikTok
- ☐ Dusan
- ☐ Twitter
- ☐ YouTube
- ☐ Facebook
- ☐ Snapchat
- ☐ None of these

[Continue »](#)

Q110

In what state do you live?

Select one... ▾

[Continue »](#)

Q120

In the past 12 months, which of the following, if any, have you personally purchased, either for yourself or for someone else?

Please select all that apply

- ☐ Mobile phone or tablet
- ☐ Mobile phone or tablet case
- ☐ Chutil cover or box
- ☐ Shower curtain or mat
- ☐ Women's clothing or footwear
- ☐ Men's clothing or footwear
- ☐ None of these

[Continue »](#)

Appendix C: Screenshots

Q130

In the next 12 months, which of the following, if any, are you likely to personally purchase, either for yourself or for someone else?

Please select all that apply

- ☐ Mobile phone or tablet
- ☐ Mobile phone or tablet case
- ☐ Chutil cover or box
- ☐ Shower curtain or mat
- ☐ Women's clothing or footwear
- ☐ Men's clothing or footwear
- ☐ None of these

Continue »

Q140

In the past 12 months, which of the following items of women's clothing or footwear, if any, have you personally purchased, either for yourself or for someone else?

Please select all that apply

- ☐ Compression tee shirt
- ☐ Compression tights/sweatpants
- ☐ Wool trousers
- ☐ Turtleneck sweater
- ☐ Dress
- ☐ Hoodie sweatshirt
- ☐ Running shoes
- ☐ Collar shirt
- ☐ Running shorts
- ☐ Sandals
- ☐ None of these

Continue »

Appendix C: Screenshots

Q145

In the next 12 months, which of the following items of women's clothing or footwear, if any, are you likely to personally purchase, either for yourself or for someone else?

Please select all that apply

- ☐ Compression tee shirt
- ☐ Compression tights/sweatpants
- ☐ Wool trousers
- ☐ Turtleneck sweater
- ☐ Dress
- ☐ Hoodie sweatshirt
- ☐ Running shoes
- ☐ Collar shirt
- ☐ Running shorts
- ☐ Sandals
- ☐ None of these

[Continue »](#)

Q150

In the past 12 months, which of the following items of men's clothing or footwear, if any, have you personally purchased, either for yourself or for someone else?

Please select all that apply

- ☐ Turtleneck sweater
- ☐ Running shoes
- ☐ Collar shirt
- ☐ Compression/sweat jacket
- ☐ Sport coat
- ☐ Shorts
- ☐ Tee shirt
- ☐ Sandals
- ☐ Sweatpants
- ☐ Wool trousers
- ☐ None of these

[Continue »](#)

Appendix C: Screenshots

Q155

In the next 12 months, which of the following items of men's clothing, if any, are you likely to personally purchase, either for yourself or for someone else?

Please select all that apply

- ☐ Turtleneck sweater
- ☐ Running shoes
- ☐ Collar shirt
- ☐ Compression/sweat jacket
- ☐ Sport coat
- ☐ Shorts
- ☐ Tee shirt
- ☐ Sandals
- ☐ Sweatpants
- ☐ Wool trousers
- ☐ None of these

Continue »

Q170

For quality assurance, please type the word "survey" in the blank next to the "Other" box below and then click to continue.

Please select one

- ☐ Strongly agree
- ☐ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree
- ☐ Other

Continue »

Appendix C: Screenshots

Q180

You have qualified to take this survey. Before continuing, please carefully read these instructions:

- Please take the survey in one session without interruption.
- Please keep your browser maximized for the entire survey.
- While taking the survey, please do not consult any other websites or other electronic or written materials.
- Please answer all questions on your own without consulting any other person.
- If you normally wear eye glasses or contact lenses when viewing a computer screen, please wear them for the survey.

Please select one

- ☐ I understand and agree to the above instructions
- ☐ I do not understand or do not agree to the above instructions

Continue >

Appendix C: Screenshots

MAIN SURVEY – Groups 1, 3 & 4 (Cells 1, 3, 4, 9, 11, 12)

Q202

On the next screen you will see images of **clothing**.

Please take as much time as you need to view the clothing so we can ask you some questions about it.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

Continue >

Q210 GROUP 1 – TEST (CELL 1)

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **clothing** clearly.

- ☐ I viewed the **clothing** clearly
- ☐ I am unable to view the **clothing** clearly

Continue »

Appendix C: Screenshots

Q210 GROUP 1 – CONTROL (CELL 9)

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **clothing** clearly.

- ☐ I viewed the **clothing** clearly
- ☐ I am unable to view the **clothing** clearly

Continue »

Q210 GROUP 3 – TEST (CELL 3)

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **clothing** clearly.

- ☐ I viewed the **clothing** clearly
- ☐ I am unable to view the **clothing** clearly

Continue >

Appendix C: Screenshots

Q210 GROUP 3 - CONTROL (CELL 11)

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.


Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.




To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.





Before continuing with the survey, please indicate whether or not you have viewed the **clothing** clearly.


☐ I viewed the **clothing** clearly


☐ I am unable to view the **clothing** clearly

Continue >

Q210 GROUP 4 – TEST (CELL 4)

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.





To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **clothing** clearly.

- ☐ I viewed the **clothing** clearly
- ☐ I am unable to view the **clothing** clearly

Continue >

Appendix C: Screenshots

Q210 GROUP 4 – CONTROL (CELL 12)

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

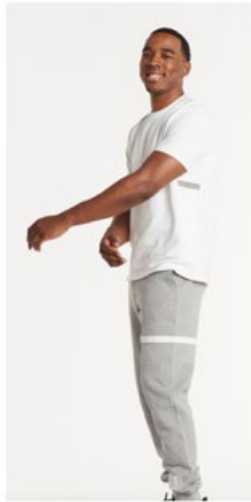
Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **clothing** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **clothing** clearly.

☐ I viewed the **clothing** clearly

☐ I am unable to view the **clothing** clearly

Continue »

Q220

What company or brand do you believe makes or puts out the **clothing** we just showed you, if you have an opinion?

Please be as specific and detailed as possible

☐ Don't know/No opinion

Continue »

Appendix C: Screenshots

Q230

What makes you think the **clothing** we showed you is made or put out by ____?

Please be as specific and detailed as possible

Continue »

Q260

Do you think the **clothing** we showed you is affiliated with, or sponsored or approved by, any other company or brand?

Please select one

- ☐ Yes, I do
- ☐ No, I do not
- ☐ Don't know/No opinion

Continue »

Q265

You answered that you think the **clothing** we showed you is affiliated with, or sponsored or approved by, another company or brand.

What other company or brand?

If you are thinking of more than one company or brand, please enter each one in a separate box below. Or if you don't know you may select that option.

☐ Don't know

Continue »

Appendix C: Screenshots

Q270

Each company or brand you mentioned is listed below.

For each one, please tell us your reasons for thinking that the **clothing** we showed you is affiliated with, or sponsored or approved by, that company or brand.

Please be as specific and detailed as possible.

	Reasons:
<div></div>	<div></div>
<div></div>	<div></div>

Continue »

Appendix C: Screenshots

MAIN SURVEY – Group 2 (Cells 2 & 10)

Q200

On the next screen you will see images of clothing, including a hoodie sweatshirt.

Please take as much time as you need to view the hoodie sweatshirt, so we can ask you some questions specifically about the hoodie sweatshirt.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

Continue »

Q210 GROUP 2 – TEST (CELL 2)

Please click through each image of the hoodie sweatshirt below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **hoodie sweatshirt** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **hoodie sweatshirt** clearly.

- ☐ I viewed the **hoodie sweatshirt** clearly
- ☐ I am unable to view the **hoodie sweatshirt** clearly

Continue »

Q210 GROUP 2 – CONTROL (CELL 10)

Please click through each image of the **hoodie sweatshirt** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the hoodie sweatshirt below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the hoodie sweatshirt clearly.

- ☐ I viewed the hoodie sweatshirt clearly
- ☐ I am unable to view the hoodie sweatshirt clearly

Continue »

Q220

What company or brand do you believe makes or puts out the hoodie sweatshirt we just showed you, if you have an opinion?

Please be as specific and detailed as possible

- ☐ Don't know/No opinion

Continue »

Appendix C: Screenshots

Q230

What makes you think the hoodie sweatshirt we showed you is made or put out by -----?

Please be as specific and detailed as possible

Continue »

Q260

Do you think the hoodie sweatshirt we showed you is affiliated with, or sponsored or approved by, any other company or brand?

Please select one

- ☐ Yes, I do
- ☐ No, I do not
- ☐ Don't know/No opinion

Continue »

Q265

You answered that you think the hoodie sweatshirt we showed you is affiliated with, or sponsored or approved by, another company or brand.

What other company or brand?

If you are thinking of more than one company or brand, please enter each one in a separate box below. Or if you don't know you may select that option.

☐ Don't know

Continue »

Appendix C: Screenshots

Q270

Each company or brand you mentioned is listed below.

For each one, please tell us your reasons for thinking that the **hoodie sweatshirt** we showed you is affiliated with, or sponsored or approved by, that company or brand.

Please be as specific and detailed as possible.

	Reasons:
<div></div>	<div></div>
<div></div>	<div></div>

Continue »

Appendix C: Screenshots

MAIN SURVEY – Group 5 (Cells 5 & 13)

Q200

On the next screen you will see images of clothing, including a **pair of shorts**.

Please take as much time as you need to view the **pair of shorts**, so we can ask you some questions specifically about the **pair of shorts**.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

Continue >

Q210 GROUP 5 – TEST (CELL 5)


Please click through each image of the **shorts** below. You may click on any image if you would like to see it enlarged.




To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **shorts** below. You may click on any image if you would like to see it enlarged.





Before continuing with the survey, please indicate whether or not you have viewed the **shorts** clearly.


☐ I viewed the **shorts** clearly


☐ I am unable to view the **shorts** clearly

Continue >

Q210 GROUP 5 – CONTROL (CELL 13)

Please click through each image of the **shorts** below. You may click on any image if you would like to see it enlarged.





To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **shorts** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **shorts** clearly.

- ☐ I viewed the **shorts** clearly
- ☐ I am unable to view the **shorts** clearly

Continue »

Q220

What company or brand do you believe makes or puts out the **shorts** we just showed you, if you have an opinion?

Please be as specific and detailed as possible

- ☐ Don't know/No opinion

Continue »

Appendix C: Screenshots

Q230

What makes you think the **shorts** we showed you is made or put out by ----?

Please be as specific and detailed as possible

Continue »

Q260

Do you think the **shorts** we showed you is affiliated with, or sponsored or approved by, any other company or brand?

Please select one

- ☐ Yes, I do
- ☐ No, I do not
- ☐ Don't know/No opinion

Continue »

Q265

You answered that you think the **shorts** we showed you is affiliated with, or sponsored or approved by, another company or brand.

What other company or brand?

If you are thinking of more than one company or brand, please enter each one in a separate box below. Or if you don't know you may select that option.

☐ Don't know

Continue »

Appendix C: Screenshots

Q270

Each company or brand you mentioned is listed below.

For each one, please tell us your reasons for thinking that the **shorts** we showed you is affiliated with, or sponsored or approved by, that company or brand.

Please be as specific and detailed as possible.

	Reasons:
<div></div>	<div></div>
<div></div>	<div></div>

Continue »

Appendix C: Screenshots

MAIN SURVEY – Group 6 (Cells 6 & 14)

Q200

On the next screen you will see images of clothing, including a **jacket**.

Please take as much time as you need to view the **jacket**, so we can ask you some questions specifically about the **jacket**.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

Continue »

Q210 CELL 6

Please click through each image of the **jacket** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **jacket** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Please click through each image of the **jacket** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **jacket** clearly.

- ☐ I viewed the **jacket** clearly
- ☐ I am unable to view the **jacket** clearly

Continue >

Appendix C: Screenshots

Q210 GROUP 6 – CONTROL (CELL 14)

Please click through each image of the **jacket** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Please click through each image of the **jacket** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **jacket** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **jacket** clearly.

- ☐ I viewed the **jacket** clearly
- ☐ I am unable to view the **jacket** clearly

Continue »

Q220

What company or brand do you believe makes or puts out the **jacket** we just showed you, if you have an opinion?

Please be as specific and detailed as possible

- ☐ Don't know/No opinion

Continue »

Appendix C: Screenshots

Q230

What makes you think the **jacket** we showed you is made or put out by ____?

Please be as specific and detailed as possible

Continue »

Q260

Do you think the **jacket** we showed you is affiliated with, or sponsored or approved by, any other company or brand?

Please select one

- ☐ Yes, I do
- ☐ No, I do not
- ☐ Don't know/No opinion

Continue »

Q265

You answered that you think the **jacket** we showed you is affiliated with, or sponsored or approved by, another company or brand.

What other company or brand?

If you are thinking of more than one company or brand, please enter each one in a separate box below. Or if you don't know you may select that option.

☐ Don't know

Continue »

Appendix C: Screenshots

Q270

Each company or brand you mentioned is listed below.

For each one, please tell us your reasons for thinking that the **jacket** we showed you is affiliated with, or sponsored or approved by, that company or brand.

Please be as specific and detailed as possible.

	Reasons:
<div></div>	<div></div>
<div></div>	<div></div>

Continue »

Appendix C: Screenshots

MAIN SURVEY – Group 7 (Cells 7 & 15)

Q200

On the next screen you will see images of clothing, including a **pair of sweatpants**.

Please take as much time as you need to view the **pair of sweatpants**, so we can ask you some questions specifically about the **pair of sweatpants**.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

Continue »

Q210 GROUP 7 – TEST (CELL 7)

Please click through each image of the **sweatpants** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **sweatpants** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Please click through each image of the **sweatpants** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **sweatpants** clearly.

- ☐ I viewed the **sweatpants** clearly
- ☐ I am unable to view the **sweatpants** clearly

Continue »

Appendix C: Screenshots

Q210 GROUP 7 – CONTROL (CELL 15)

Please click through each image of the **sweatpants** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Please click through each image of the **sweatpants** below. You may click on any image if you would like to see it enlarged.



To ensure you have had enough time to view the image, the continue button will remain disabled for 15 seconds.

Appendix C: Screenshots

Please click through each image of the **sweatpants** below. You may click on any image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **sweatpants** clearly.

- ☐ I viewed the **sweatpants** clearly
- ☐ I am unable to view the **sweatpants** clearly

Continue »

Q220

What company or brand do you believe makes or puts out the **sweatpants** we just showed you, if you have an opinion?

Please be as specific and detailed as possible

- ☐ Don't know/No opinion

Continue »

Appendix C: Screenshots

Q230

What makes you think the **sweatpants** we showed you is made or put out by ____?

Please be as specific and detailed as possible

Continue »

Q260

Do you think the **sweatpants** we showed you is affiliated with, or sponsored or approved by, any other company or brand?

Please select one

- ☐ Yes, I do
- ☐ No, I do not
- ☐ Don't know/No opinion

Continue »

Q265

You answered that you think the **sweatpants** we showed you is affiliated with, or sponsored or approved by, another company or brand.

What other company or brand?

If you are thinking of more than one company or brand, please enter each one in a separate box below. Or if you don't know you may select that option.

☐ Don't know

Continue »

Appendix C: Screenshots

Q270

Each company or brand you mentioned is listed below.

For each one, please tell us your reasons for thinking that the sweatpants we showed you is affiliated with, or sponsored or approved by, that company or brand.

Please be as specific and detailed as possible.

	Reasons:
<div></div>	<div></div>
<div></div>	<div></div>

Continue »

Appendix C: Screenshots

MAIN SURVEY – Group 8 (Cells 8 & 16)

Q205

On the next screen you will see an image of **footwear**.

Please take as much time as you need to view the footwear so we can ask you some questions about it.

For any question, if you have no opinion or do not know, then please indicate so. Please do not guess.

Continue »

Q210 GROUP 8 – TEST (CELL 8)

Please view the image below. You may click on the image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **footwear** clearly.

- ☐ I viewed the **footwear** clearly
- ☐ I am unable to view the **footwear** clearly

Continue »

Q210 GROUP 8 – CONTROL (CELL 16)

Please view the image below. You may click on the image if you would like to see it enlarged.



Before continuing with the survey, please indicate whether or not you have viewed the **footwear** clearly.

- ☐ I viewed the **footwear** clearly
- ☐ I am unable to view the **footwear** clearly

Continue »

Appendix C: Screenshots

Q220

What company or brand do you believe makes or puts out the **footwear** we just showed you, if you have an opinion?

Please be as specific and detailed as possible

☐ Don't know/No opinion

Continue »

Q230

What makes you think the **footwear** we showed you is made or put out by -----?

Please be as specific and detailed as possible

Continue »

Q260

Do you think the **footwear** we showed you is affiliated with, or sponsored or approved by, any other company or brand?

Please select one

- ☐ Yes, I do
- ☐ No, I do not
- ☐ Don't know/No opinion

Continue »

Appendix C: Screenshots

Q265

You answered that you think the **footwear** we showed you is affiliated with, or sponsored or approved by, another company or brand.

What other company or brand?

If you are thinking of more than one company or brand, please enter each one in a separate box below. Or if you don't know you may select that option.

☐ Don't know

Continue »

Q270

Each company or brand you mentioned is listed below.

For each one, please tell us your reasons for thinking that the **footwear** we showed you is affiliated with, or sponsored or approved by, that company or brand.

Please be as specific and detailed as possible.

	Reasons:

Continue »

Appendix C: Screenshots

POST-SURVEY CLASSIFICATION - ALL GROUPS/CELLS

Q300

Please select the answer "East" from the following list of choices to continue with the survey.

Please select one

- ☐ East
- ☐ North
- ☐ West
- ☐ South

Continue »

Q400

Do you or does anyone in your household work for any of the following?

Please select all that apply

- ☐ An advertising or market research company
- ☐ A company that makes or sells footwear
- ☐ A company that makes or sells clothing
- ☐ No, none of these

Continue »

Q500

Do you or does anyone in your household work for any of the following companies?

Please select all that apply

- ☐ Nike
- ☐ Thom Browne
- ☐ Under Armour
- ☐ New Balance
- ☐ Kadri
- ☐ Adidas
- ☐ Columbia
- ☐ Puma
- ☐ None of these

Finish

Appendix D: Survey Data File

(See Native File)

Appendix E: Respondent Records Not Included in Confusion Calculation

The following respondent records were footnoted in the report. These mentioned adidas but were not counted as confused in the analysis, in order to be conservative.

Group 1 Respondent IDs	
Test (Cell 1)	Control (Cell 9)
<i>Named adidas, but expressed significant uncertainty</i>	<i>Named adidas, but expressed significant uncertainty</i>
517	-
1225	-
1742	-
<i>Named adidas and another brand in same answer</i>	<i>Named adidas and another brand in same answer</i>
1607	3947
1741	-
1879	-

Group 2 Respondent IDs	
Test (Cell 2)	Control (Cell 10)
<i>Named adidas, but expressed significant uncertainty</i>	<i>Named adidas, but expressed significant uncertainty</i>
3972	3858
<i>Named adidas and another brand in same answer</i>	<i>Named adidas and another brand in same answer</i>
287	44
326	-
772	-

Group 3 Respondent IDs	
Test (Cell 3)	Control (Cell 11)
<i>Named adidas, but expressed significant uncertainty</i>	<i>Named adidas, but expressed significant uncertainty</i>
1727	4403
3684	-
<i>Named adidas and another brand in same answer</i>	<i>Named adidas and another brand in same answer</i>
766	1951
2840	2035
3037	2637
3290	-
4454	-
4515	-

Appendix E: Respondent Records Not Included in Confusion Calculation

Group 5 Respondent IDs	
Test (Cell 5)	Control (Cell 13)
<i>Named adidas, but expressed significant uncertainty</i>	<i>Named adidas, but expressed significant uncertainty</i>
537	-
<i>Named adidas and another brand in same answer</i>	<i>Named adidas and another brand in same answer</i>
1777	5377
3029	-

Group 6 Respondent IDs	
Test (Cell 6)	Control (Cell 14)
<i>Named adidas, but expressed significant uncertainty</i>	<i>Named adidas, but expressed significant uncertainty</i>
446	-
1774	-
2341	-
5904	-
<i>Named adidas and another brand in same answer</i>	<i>Named adidas and another brand in same answer</i>
4680	-

Group 7 Respondent IDs	
Test (Cell 7)	Control (Cell 15)
<i>Named adidas, but expressed significant uncertainty</i>	<i>Named adidas, but expressed significant uncertainty</i>
2008	-
3512	-
<i>Named adidas and another brand in same answer</i>	<i>Named adidas and another brand in same answer</i>
3173	-
3288	-

Group 8	
Test (Cell 8)	Control (Cell 16)
<i>Named adidas and another brand in same answer</i>	<i>Named adidas and another brand in same answer</i>
2458	617
3138	-
3139	-